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# *United States v. Duro:* Farmworker Housing and Agricultural Law Constructions

GUADALUPE T. LUNA\*

## Introduction

Since before the New Deal, the United States' food production system has relied on the labor of migrant agricultural workers.<sup>1</sup> Farmworkers cultivate and harvest key commodities that food legislation requires, and which employers and the United States Department of Agriculture demand.<sup>2</sup> Without farm laborers,

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1. WILLIAM KANDEL, U.S. DEP'T. OF AGRIC., ECONOMIC RESEARCH REPORT NO. 60, PROFILE OF HIRED FARMWORKERS, A 2008 UPDATE (2008), available at <http://www.ers.usda.gov/publications/err60/err60.pdf>. ("[F]armworkers . . . are critical to U.S. agricultural production, especially for labor-intensive agricultural sectors such as fruits and vegetables."). Farmworkers also raise other commodities, including corn, soybeans, cash grains, wheat, hogs, cattle, tobacco, cotton, peanuts, poultry, and dairy. *Id.* at 5. Yet farmworkers population figures show them heavily employed in "labor intensive crops such as fruits, vegetables, and nursery products." Tom Hertz, *Rural Labor and Education: Farm Labor*, U.S. DEP'T OF AGRIC. (July 11, 2011), <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm>. The population of hired farmworkers encompasses, *inter alia*, "field crop workers, nursery workers, livestock workers, farmworker supervisors, and hired farm managers." *Id.* In sum, farmworkers work in both the rural and urban spheres. *Id.*

2. It is impossible to list all farm legislation that facilitates crop production, as it would entail thousands of references. The federal architects of food production in the U.S. are the farm bills that emerge approximately every five years. Specifically, "A farm bill is an omnibus legislative statute consisting of a collection of laws that sets the overall direction of U.S. agriculture policy for a specified number of years." JEAN YAVIS JONES, CONG. RESEARCH SERV., RL 30956 WHAT IS A FARM BILL? 1 (2001). *See also* RENÉE JOHNSON, CONG. RESEARCH SERV., RL 22131, WHAT IS THE "FARM BILL"? 1 (2008). The

growers and producers would risk financial ruin.<sup>3</sup> Consumers would also confront the absence of fruits, vegetables and other produce from their diet.<sup>4</sup>

Notwithstanding farmworkers' vital role in food production,<sup>5</sup> the historical and legal record reveals an agricultural system that denies to farmworkers and their families sufficient, safe low-income housing.<sup>6</sup> Agricultural laws and policies offer inadequate remedies<sup>7</sup>

nation's most recent farm bill is entitled The Food Conservation, and Energy Act, Pub. Law 110-246 (2008). The next forthcoming farm bill should emerge in 2012. See, e.g., *Agriculture Secretary Vilsack on Priorities for the 2012 Farm Bill*, U.S. DEP'T OF AGRIC. (Oct. 24, 2011), <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0458.xml&contentidonly=true> (transcript of the Secretary's remarks listing priorities of the forthcoming farm bill).

3. Federal law defines a migrant or agricultural worker as "an individual employed in agricultural employment or other temporary nature, and who is required to be absent overnight from his permanent place of business." 29 U.S.C. § 1802(8)(A) (2006). The term seasonal agricultural worker "means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence" 29 U.S.C. § 1802(10)(A) (2006).

4. It is argued that the Alabama anti-immigration law forced both citizens and non-citizens to flee the State. See *Hispanic Interest Coal. of Ala. vs. Bentley*, No. 5:11-CV-2484-SLB, 2011 WL 5516953 (N.D. Ala. Jul. 21, 2011) (motion for preliminary injunction to bar the implementation of the Beason-Hammon Alabama Citizen Protection Act); JOHN C. MCKISSICK & SHARON P. KANE, GA. FRUIT & VEGETABLE GROWERS ASS'N, AN EVALUATION OF DIRECT AND INDIRECT LOSSES OCCURRED INCURRED BY GEORGIA FRUIT AND VEGETABLE PRODUCERS IN SPRING 2011 — PRELIMINARY DATA ANALYSIS AND SUMMARY WORKING PAPER, GEORGIA FRUIT & VEGETABLE GROWERS ASSOCIATION (2011) (reporting labor shortages approximating 11,000 workers and millions of dollars in losses to growers and producers in areas highly "dependent" on farm labor).

5. See Kandel, *supra* note 1 (listing examples of commodities needing farm laborer).

6. Insufficient and dangerous housing conditions have plagued the agricultural workforce for centuries. See, e.g., DEP'T OF MICH. CIVIL RIGHTS, A REPORT ON THE CONDITIONS OF MIGRANT AND SEASONAL FARMWORKERS IN MICHIGAN 10-15 (2010), available at [http://www.michigan.gov/documents/mdcr/MSFW-Conditions2010\\_318275\\_7.pdf](http://www.michigan.gov/documents/mdcr/MSFW-Conditions2010_318275_7.pdf) (finding dire housing conditions); N.C. ADVISORY COMM. TO THE U.S. COMM'N OF CIVIL RIGHTS, WHERE MULES OUT RATE MEN: MIGRANT AND SEASONAL FARMWORKERS IN NORTH CAROLINA 15 (1979), available at [www.law.umaryland.edu/marshall/usccr/documents/cr12m89.pdf](http://www.law.umaryland.edu/marshall/usccr/documents/cr12m89.pdf); TEX. DEP'T OF HOUS. & CMTY. AFFAIRS, MIGRANT LABOR HOUSING FACILITIES IN TEXAS: A REPORT ON THE QUANTITY, AVAILABILITY, NEED, AND QUALITY OF MIGRANT LABOR HOUSING IN THE STATE 1 (2006), available at [www.tdhca.state.tx.us/migrant-housing/docs/06-MLHfacilities.pdf](http://www.tdhca.state.tx.us/migrant-housing/docs/06-MLHfacilities.pdf); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/T-HRD-91-40, FARMWORKERS FACE GAPS IN PROTECTIONS AND BARRIERS TO BENEFITS (1991); David Olinger, *Separate and Unequal*, ST. PETERSBURG TIMES, Dec. 20, 1992, at 1D (detailing worker's payment of \$520.00 for "a dented metal trailer, with warped floors covered by a mosaic of linoleum patches and ceiling patched with plywood" and "other harmful conditions listed").

7. See 29 U.S.C. §§1801-1872 (2006). For example, the legislation does not provide an incentive for agricultural employers to avoid failing to pay workers. See, e.g., Complaint - Class Action, *Luna v. Del Monte Fresh Produce*, No. 06-21015 (U.S. D.C. Fla. 2006), available at <http://www.splcenter.org/get-informed/case-docket/hector-luna-et-al-v-del-monte-fresh-produce-southeast-inc-et-al>.

and fail to require provision of worker housing, thereby creating a culture that promotes insufficient and unsafe housing for farm laborers.<sup>8</sup> This article assesses the harm that innumerable farmworkers confront while residing in unsafe and adverse housing conditions. It addresses moreover the causal relationship between unsanitary housing conditions with agricultural law and policies.<sup>9</sup>

Throughout United States agricultural history, advocates have challenged the lack of low-cost housing available to farm laborers. For numerous reasons data is difficult to estimate as to the exact number of workers facing unsafe housing conditions. Against this backdrop, state reports whether from advocates or state civil rights studies provide a measure of insight.<sup>10</sup> Compounded with weak federal and state enforcement mechanisms, laborers thereby confront deplorable and dangerous housing conditions. Rural unincorporated communities where workers reside for example often lack “proper sewage disposal, storm drains, without safe water supplies or adequate police protection . . .”<sup>11</sup> Farmworkers have

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8. The United States Department of Agriculture, National Agricultural Statistics Service periodically surveys the farmworker population. It reports that the “majority of hired farm workers are evenly divided between large and small operations.” U.S. DEP’T OF AGRIC., 2007 CENSUS OF AGRICULTURE: FARM LABOR (2007), available at [http://www.agcensus.usda.gov/Publications/2007/Online\\_Highlights/Fact\\_Sheets/Economics/farm\\_labor.pdf](http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Economics/farm_labor.pdf). Further that, “forty percent of hired farm workers were employed by large operations with \$1,000,000 or more in agricultural product sales. Small farms, those with sales less than \$250,000, also employed 40 percent of hired farm workers in the United States.” *Id.* at 1. Nonetheless, this is imprecise because censuses often fail to count workers in the fields. See, e.g., Hertz, *supra* note 1. In sum, insufficient housing remains the norm. See, e.g., JOEL TECHTERMAN, CAL. DEP’T OF HOUS. & CMTY. DEV., FARMWORKER HOUSING RESOURCES (2008), available at [www.hcd.ca.gov/hpd/farmworker.pdf](http://www.hcd.ca.gov/hpd/farmworker.pdf) (listing the needs of and resources for various rural California communities); NAT’L COMM’N ON FAIR HOUS. & EQUAL OPPORTUNITY, FAIR HOUSING AND POVERTY IN RURAL AREAS: LOCAL GOVERNMENT, MUNICIPAL SERVICES, FARMWORKERS AND COLONIAS 2 (2008) (providing testimony); Christopher Holden, *Housing*, 8 Monograph Series 40 (2001), available at <http://www.ncfh.org/docs/08%20%20housing.pdf>.

9. See, e.g., JONES, *supra* note 2, at 1; SUSAN SCHNEIDER, AGRIC. LAW UPDATE, WHAT IS AGRICULTURAL LAW? (2009) (describing the pedagogical value of agricultural law and what belongs in the canon of agricultural law), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1331422](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1331422).

10. See DEP’T OF MICH. CIVIL RIGHTS, *supra* note 6, at 9. State reports, moreover, examine primarily the quality of migrant housing as defined under state law and limited assessments of the type of housing conditions for workers who do not reside in state operated camps. See, e.g., TEX. DEP’T OF HOUS. & CMTY, *supra* note 6, at 3.

11. NAT’L COMM’N ON FAIR HOUS. & EQUAL OPPORTUNITY, *supra* note 8, at 4. Funds are available for farmworker housing but opposition to such housing, ineligibility, and insufficient funding diminishes availability. See, e.g., U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-329, Opportunities Exist to Strengthen Farm Labor Housing Program Management and Oversight (2011) (reporting on the Farm Labor Housing Loan and

furthermore found housing in campgrounds,<sup>12</sup> inferior motels, formerly used chicken coops, and poorly constructed, ill-maintained trailer parks.<sup>13</sup> Farm laborers and their families moreover live in crowded conditions in garages, sheds, and even caves.<sup>14</sup> Where provided, farmworker housing is often located near pesticide-laden fields and lacks adequate sanitation facilities or the lack of potable water in the fields harm workers who thereafter carry the pesticides on their clothing into their residences. The absence of water and electrical utilities in innumerable housing situations further expose residents to disease.<sup>15</sup> The lack of window screens, gutters, water drains, sidewalks and other amenities incur additional damage to the health of farmworkers in the isolated and segregated housing conditions in which they reside.

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Grant Program); *Eliserio v. Floydada Hous. Auths.*, No. L-05-cv-4, 2008 WL 901493 (S.D. Tex. Mar. 31, 2008) (farmworkers challenging USDA's program enforcement and funding decisions with respect to FHA facility and other farm labor housing); *Bobadilla-German v. Bear Creek Orchards, Inc.*, 641 F.3d 391, 393 (9th Cir. 2011) (holding that certain on-site housing costs could not be credited toward the minimum wage under an Oregon statute). In California, one report provided that thirty percent of seasonal farm workers "live in situations not meant for human habitation such as outdoors or other locations not meant for sleeping, cars/truck/vans/trailers on streets or in parking lots, trailers or RVs on private residential property or in converted garages." THE COUNTY OF RIVERSIDE, COACHELLA VALLEY FARM WORKER SURVEY: FINAL REPORT 7 (2007).

12. See, e.g., THE COUNTY OF RIVERSIDE, *supra* note 11, at 7. See also *Camping To Be Restricted for Farmworkers, Anglers*, REDORBIT (Mar. 13, 2007), [http://www.redorbit.com/news/science/868355/camping\\_to\\_be\\_restricted\\_for\\_farmworkers\\_anglers/](http://www.redorbit.com/news/science/868355/camping_to_be_restricted_for_farmworkers_anglers/) (restricting use of a campsite used by farmworkers or anglers during cherry harvest); Gillian Flaccus, *Migrant Workers Struggle to Find Housing in Rich Farming Region*, N. COUNTY TIMES (Aug. 14, 2007), [http://www.nctimes.com/news/state-and-regional/article\\_6555213e-ff45-52db-8eb6-46948f33fc4f.html](http://www.nctimes.com/news/state-and-regional/article_6555213e-ff45-52db-8eb6-46948f33fc4f.html).

13. *Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332, 334 (1st Cir. 2000) (workers claimed deplorable housing conditions). Workers appellate brief described that DeCoster's one thousand recruited farmworkers resided "... 13, 14 or more — into a 600 square foot trailer" and that DeCoster ignored "sewage backups, broken electrical outlets and holes that allowed the elements and bugs and rodents into the living spaces[citation omitted]. Mexican workers had their beds catch on fire while they slept in them ... their children became sick from the filth tracked into the trailers from workers returning from the barns and they experienced raw sewage in their homes and the heat shutting off in the middle of winter." Appellate Brief, *Estados Unidos Mexicanos v. Decoster*, No. 99-2170, 2000 WL 35572537, at \*3 (5th Cir. May 5, 2000); See also THE WASH. STATE HUMAN RIGHTS COMM'N, FARM WORKER HOUSING AND THE WASHINGTON LAW AGAINST DISCRIMINATION 1 (2007) (noting "severe" housing shortages and discriminatory practices).

14. NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY, *supra* note 8; Conlan v. U.S. Dep't of Labor, 76 F.3d 271, 273 (9th Cir. 1996) (citing migrant workers lived in an "unauthorized camp consisting of 30 to 50 shelters made of cardboard and plastic sheets. No water system or sewage system served the camp. Garbage and sewage had accumulated in the area.").

15. See, e.g., DEP'T OF MICH. CIVIL RIGHTS, *supra* note 6, at 9; Ilene Jacobs, *Farm Worker and Poverty in California, Farmworker Housing in California*, 9 LA RAZA L.J. 177, 180 (1996).

Agricultural laborers also confront opposition from local residents over proposed farmworker housing developments, in urban and rural environments.<sup>16</sup> In extreme instances, local communities adopt anti-immigrant ordinances that reject newly arriving groups of laborers, both those workers from other countries and the United States citizens whom the communities wrongly perceive to be unlawfully present in the United States.<sup>17</sup> As such, immigrant and Indigenous farmworkers remain at risk for systematic racial profiling as they perform agricultural tasks and return from family excursions in their local communities for food and other supplies.<sup>18</sup>

The agricultural industry's critical need for farmworkers stands out against the backdrop of their insufficient and adverse housing conditions. These two conflicting consequences commonly intersect and the case of *United States v. Duro* underscores the harmful taint of the nation's farm laws.<sup>19</sup> The litigation further illustrates the collision of the housing needs of foreign-born Indigenous farmworkers on the lands of a domestic Indian reservation.

Specifically, the Purépecha Indians inability to compete as

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16. See, e.g., Andrea Christina Nill, *Latinos, and S.B. 1070: Demonization, Dehumanization, and Disenfranchisement*, 14 HARV. LATINO L. REV. 35 (2011); See generally FRANCES ANSLEY & JON SHEFNER, *GLOBAL CONNECTIONS AND LOCAL RECEPTIONS, NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES* (2009) (considering Latino migration to different regions in the U.S. with special attention to Tennessee). On the state level, see *Hispanic Interest Coal. of Ala. vs. Bentley*, No. 5:11-CV-2484-SLB, 2011 WL 5516953 (N.D. Ala., Jul. 21, 2011); *The Support Our Law Enforcement and Safe Neighborhood Act*, S.B. 1070, 49 Leg., 2d Sess. (Ariz. 2010) (anti-immigration legislation). On the municipal level see *Lozano v. City of Hazelton*, 496 F. Supp. 2d 477 (M.D. Pa. 2007) (targeting tenancies and employment and tenancies of potential undocumented aliens); *Durig v. Wash. County & Townsend Farms*, 34 P.3d 169 (Or. App. 2001) (petitioners challenged farm employer's approved request to construct farmworker housing); *Estados Unidos Mexicanos*, 229 F.3d 332 (prima facie case of racial discrimination in city's denial of housing permit); Nancy Madsen, *Farmworkers Bill Debated at Hearing*, WATERTOWN DAILY TIMES (Mar. 2, 2010), <http://www.watertowndailytimes.com/article/20100302/NEWS03/303029964>;

17. See, e.g., *UFW of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974) (complaint alleged the city had racially discriminatory reasons for refusing to allow proposed low income housing developments to connect to water and sewage systems); Michael A. Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27 (2007); *Lozano*, 496 F. Supp. 2d 477; *Estados Unidos Mexicanos*, 229 F.3d at 322.

18. See, e.g., *Midwest Border Patrol and Local Law Enforcement Alliances*, NUESTRAS VOCES LATINAS (Mar. 25, 2010), <http://nuestrasvoceslatinas.com/2010/03/25/midwest-border-patrol-and-local-law-enforcement-alliances/> (describing a class action complaint that alleged a host of Ohio law enforcement agencies were encouraging racial profiling of "Hispanics").

19. *United States v. Duro*, 625 F. Supp. 2d 938 (C.D. Cal. 2009).

agricultural producers in a globalized economy brought them from Michoacán, Mexico to California, and specifically to the Coachella Valley.<sup>20</sup> Michoacán is a region recognized as a “sender state” of farmworkers to the United States.<sup>21</sup> The Purépecha provide critical labor to agribusiness, which constitutes the “second largest industry in the Coachella Valley.”<sup>22</sup> The Coachella Valley, California, is also home to the Indigenous Cahuilla nation, whose reservation housed the “Duroville” mobile home park, which is the subject of this article.

The agricultural census reports that California has the largest

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20. The Purépecha are primarily from the Mexican state of Michoacán that is an agrarian and industrial economy. In the early 1990s in California, Mexican-born workers began arriving from new regions of Mexico including the largest share from Guanajuato, Jalisco, and Michoacán. TADLOCK COWAN, CONG. RESEARCH SERV., RL31340, CALIFORNIA'S SAN JOAQUIN VALLEY: A REGION IN TRANSITION 8 (2005). Globalization of the agricultural marketplace followed from the North American Free Trade Agreement, that lessened tariffs and created the world's largest marketplace. North American Free Trade Agreement, 19 U.S.C. § 3301-3473 (2006) [hereinafter NAFTA]. For the impact of globalization on Mexico see, e.g., JOHN BURNSTEIN, WOODROW WILSON INT'L CTR. FOR SCHOLARS, UNITED STATES-MEXICO AGRICULTURAL TRADE AND RURAL POVERTY IN MEXICO 5-9 (2007), available at [http://wilsoncenter.org/sites/default/files/Mexico\\_Agriculture\\_rpt\\_English1.pdf](http://wilsoncenter.org/sites/default/files/Mexico_Agriculture_rpt_English1.pdf). Filmmaker Stephanie Maldonado's film project identifies the Purépecha as “the poorest of the poor.” THE PUREPECHA: POOREST OF THE POOR, available at <http://www.indivision2000.com>. Purépecha constitute approximately sixty five percent of the residents of the “Duroville” mobile home park that located on the Torres Martinez Desert Cahuilla Indian Reservation, in Coachella Valley, California. David Kelly, *Illegal trailer park grows into a community*, L.A. TIMES (June 5, 2010), <http://articles.latimes.com/2010/jun/05/local/la-me-duroville-20100605>; See also David Bacon, *How the Pur'hepecha's Came to the Coachella Valley*, NEW AM. MEDIA (Jan. 12, 2011), <http://new.americamedia.org/2011/01/coachella-labor-camp.php>; *Indigenous Mexicans in California Agriculture*, INDIGENOUS FARMWORKER STUDY, <http://www.indigenousfarmworkers.org> (last visited May 1, 2012) (sharing insight from the study performed by farm labor researchers and California Rural Legal Assistance).

21. The term, “sender states,” refers to the countries of origin of farmworkers. See, e.g., RICHARD MINES ET AL., CALIFORNIA'S INDIGENOUS FARMWORKERS: FINAL REPORT OF THE INDIGENOUS FARMWORKER STUDY TO THE CALIFORNIA ENDOWMENT 3 (2010); SARAH WATSON, CALIFORNIA'S AGRICULTURAL WORKERS 1 (2010), available at <http://www.itup.org/Reports/Statewide/FarmworkerBrief070610.pdf> (“farmworkers play a vital role in the food supply of the United States”); COLLEEN W. COOK, ET AL., CONG. RESEARCH SERV., RL32724, MEXICO-U.S. RELATIONS: ISSUES FOR CONGRESS 4 (2008) (“Mexico is the second leading market for U.S. exports after Canada, and is the third most important source of U.S. imports after Canada and China.”).

22. COUNTY OF RIVERSIDE, RIVERSIDE OPERATIONAL AREA MULTI-JURISDICTIONAL LOCAL HAZARD MITIGATION PLAN 185 (Oct. 5, 2004). For a measure of the income produced for regional growers and producers, see, e.g., *California Food and Agriculture Statistics*, CAL. DEP'T OF FOOD & AGRIC., <http://www.cdffa.ca.gov/Statistics/> (last visited Mar. 1, 2012). For further information, the United States Department of Agriculture also retains significant research documents on the fruit and vegetable industry, accessible at <http://www.usda.gov>.

population of farmworkers in the United States.<sup>23</sup> Favorable treatment under farm bills and agricultural policies has enabled California's growers to produce "nearly half of U.S.-grown fruits, nuts, and vegetables." This framework also reveals the depth of the causal relationship between consumer demand and grower labor demand; farm bills operate to meet those demands.<sup>24</sup>

As illustrated in *United States v. Duro*, the region's farmworkers lack affordable housing notwithstanding their vital role to the agricultural economy.<sup>25</sup> As in other communities that resist the presence of farmworkers, the Purépecha also confronted newly adopted housing regulations that threatened their eviction from the County.<sup>26</sup> In turn, they relocated to a mobile home park on the Torres Martinez Desert Cahuilla Indian Reservation. Ironically, their move to the mobile home park also caused the Cahuilla Indian Tribe to confront the adverse consequences that follow the inadequate housing of farm laborers. To the detriment of both Indigenous groups, the mobile home park lacked adequate roads, sewage systems, plumbing and other utilities and the Park rapidly became a rural slum with severe environmental consequences for the Reservation.

The Park's rapidly deteriorating conditions exposed all parties to great harm and resulted in part from the federal preemption of Indian law that exempts reservations from state building and safety codes.<sup>27</sup> In the alternative state building codes would have tempered the rapidly escalating condition in the Park. Yet this hands-off approach did not witness the federal monitoring of the Park's increasingly harmful conditions until it not only reached but also surpassed a level of dangerousness for its residents and the Reservation.<sup>28</sup> Apart from state law, the leasing of Indian land generally requires an application process, which should have led to better regulation of the mobile home park's conditions.

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23. See also COUNTY OF RIVERSIDE, *supra* note 11 (as well as the 2008 Final Report).

24. See generally CAL. DEP'T OF FOOD & AGRIC., <http://www.cdfu.ca.gov>; Agriculture: Rich Crop Diversity, VILLAGE PROFILE, <http://www.villageprofile.com/california/07indio/indio18.html> (last visited May 1, 2012).

25. See, e.g., COUNTY OF RIVERSIDE, *supra* note 11, at 20 (71% of total respondents answered that they rent the location where they lived, allowing a comparison with the financial and economic benefits agriculture sustains in the Valley); see also *Commodity Subsidies in Kern County, CA*, ENVTL. WORKING GROUP, <http://www.ewg.org> (last visited Mar. 1, 2012).

26. Riverside County, Cal., Ordinance No. 40, Regulation the Division of Land of the County of Riverside (2009).

27. *Hernandez v. Stabach*, 145 Cal. App. 3d 309 (1983) (affirming the lower court's preliminary injunction related to unsafe housing conditions in an apartment complex).

28. See, e.g., *Bryan v. Itasca*, 426 U.S. 373 (1976).



This investigation seeks neither to malign any Indigenous group, nor to diminish the independence and sovereignty of domestic tribal groups. Rather, this article addresses how the nation's food production systems produce negative conditions for foreign-born Indigenous people employed for their labor. This article further illustrates how food production law has encroached on the sovereign rights of a domestic Indigenous group by removing their authority to control and dictate land use on their Reservation. Finally, the Cahuilla witnessed a breach of the federal government's legal obligations by permitting the festering of harmful housing conditions for several years. Ultimately, the conditions both groups confronted reveal yet another layer of the ongoing colonization of domestic and immigrant Indigenous groups.<sup>29</sup>

Part I of this article addresses the United States food production template and its impact on two Indigenous groups. It explores a realm of agricultural law that expedites employer access to agricultural employees. Part I also addresses the resulting unsanitary and unsafe housing consequences for agricultural workers. Part II addresses the attendant agricultural legal constructions that caused the severe plight of the migrant Purépecha, on the Torres Martinez Desert Cahuilla Indian Reservation. Part II also examines the wide array of agricultural laws and policies available to growers and producers, rules that nonetheless fail to require them to provide farmworker housing. Last, Part II addresses the ensuing legal battle over the fought after control of the mobile park. Part III offers potential legislative remedies to secure safe housing for farmworkers nationwide.

### **I. Agricultural Law Construction Part I: Employer Access to Agricultural Workers**

Daily, farmworkers encounter systemically adverse housing conditions, an unsavory byproduct of current food production law and agricultural policies. Agricultural laws favoring growers and producers create a culture of negligence that causes workers severe shortages of adequate housing. Ultimately, this article in seeking to protect the nation's farmworkers and their families from adverse housing conditions repeats the call for a reassessment of the jurisprudence of food production law.<sup>30</sup>

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29. See, e.g., Robert Ericson & D. Rebecca Snow, *The Indian Battle for Self Determination*, 58 Cal. L. Rev. 445, 445-48 (1970).

30. "Housing conditions of farmworkers have historically been substandard because of crowding, poor sanitation, poor housing quality, proximity to pesticides, and lax inspection and enforcement of housing regulations." Kandel, *supra* note 1, at iv; U.S.

### A. United States Food Production

Rural insurgency inspired the agricultural populism of the 1920s and 1930s, which thereafter set into motion the nation's "overall direction of federal food and farm policy" to the present period.<sup>31</sup> The farm activists of the past sought economic parity with the industrial sector, and one trajectory was through improved prices for their produce. They further sought to forestall the forfeiture of their farms resulting from the low prices to their commodities.<sup>32</sup> In response, to these demands Congress adopted the nation's first farm bills. Surfacing approximately every five years, farm bills dictate *inter alia* the types of food produced,<sup>33</sup> including what children eat in school.<sup>34</sup> Federal farm bills accordingly provide the bulk of the legal and policy framework of food production across the United States.

The farm bills address diverse issues, encompassing several extensive chapters. Legislators negotiate subsidies for qualifying commodities, place conditions on food stamps, and regulate the environment. The farm bills form a variety of relationships that include "farmers and their organizations; farm input suppliers; commodity handlers, processors and retailers; banks, insurers, and lending institutions; exporters and importers; scientists, researchers and educators; domestic and foreign consumers; low-income groups;

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Gov't Accountability Office, *supra* note 6, at 8-9 ("the supply of housing for migrant farmworkers falls far short of the demand . . . [and] is often deficient, crowded, and unsanitary"). Over the course of several decades, poor housing conditions also harm children, who work in the fields with their parents. *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-880, CHILD LABOR: LABOR CAN STRENGTHEN ITS EFFORTS TO PROTECT CHILDREN WHO WORK (2002); U.S. GOV'T ACCOUNTABILITY OFFICE, HEHS-98-193, CHILD LABOR IN AGRICULTURE: CHANGES NEEDED TO BETTER PROTECT HEALTH AND EDUCATIONAL OPPORTUNITIES (1998).

31. *See* Agricultural Fair Practices Act of 1967, 7 U.S.C. §§ 2301-2305 (2011); *See generally* Mary Summers, *The New Deal Farm Programs, Looking for Reconstruction in American Agriculture*, 74 AGRIC. HIST. 241, no. 2 (2000).

32. *See, e.g.*, J.H. Kolb, *Agriculture and Rural Life*, 39 AM. J. OF SOC. 787 (1934) (purpose of Agricultural Adjustment Act); Harold F. Breimyer, *Agricultural Philosophies and Policies in the New Deal* 68 MINN. L. REV. 333 (1983) (reporting in part on the exclusion of workers).

33. Food, Conservation, and Energy Act, *supra* note 1. *See generally* WILLARD W. COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE, A HISTORICAL ANALYSIS* (2d. ed. 1993).

34. Food, Conservation, and Energy Act, *supra* note 1, at sec. 4301 (Child Nutrition and Related Programs). Notwithstanding this section, the farm bill has not eradicated hunger across the U.S. and curiously, the USDA has eliminated the word hunger from its reports and replaced it with "food insecurity." In the U.S., official reports list 14.5% of households as food insecure. U.S. DEPARTMENT OF AGRICULTURE, *HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2010* (2011).

environmentalists; and rural communities.”<sup>35</sup> Farm bills also give farm owner-operators the benefits of internationally linked legal protections such as protective tariffs.<sup>36</sup>

These various federal supports further provide flexibility contracts and loan deficiency payments to growers and producers when “market prices are lower than loan rates.”<sup>37</sup> Disaster relief and “ad hoc emergency ‘market loss payments’” provide additional assistance during harsh times for producers and growers.<sup>38</sup> Still other support comes from direct “price support programs” that control prices for various commodities. Federal coffers have also disbursed federal payments to growers and producers “for taking environmentally sensitive land out of production.”<sup>39</sup>

Farm bill provisions interweave diverse issues, including “agricultural trade, rural development, domestic food assistance, foreign food aid, conservation, crop insurance, farm credit, forestry, and agricultural research.”<sup>40</sup> Congress dedicates extensive attention to monitoring and protecting against potential negative impacts on agricultural markets. The vast network of agricultural markets requires an accordingly extensive network of interlocking agricultural law and policies<sup>41</sup> that are “complex, tightly intertwined

35. See Food, Conservation, and Energy Act, *supra* note 1.

36. See, e.g., NAFTA, *supra* note 20. In comparison, labor was not included in the opening of this agricultural marketplace and instead within the NAFTA was included as “guiding principles.”

37. Jones, What is a Farm Bill? CRS Report for Congress, *supra* note 2.

38. *Id.* See also Food Conservation, and Energy Act, *supra* note 1, at § 1603.

39. Jones, What is a Farm Bill? CRS Report for Congress, *supra* note 2.

40. See Jones, What is a Farm Bill? *supra* note 2. Farm bills draw extensive debate specifically regarding the wealth of the sector and its relationship to federal coffers; See generally *Farm Subsidy Database*, ENVTL WORKING GROUP, <http://www.egw.org> (last visited May 1, 2012); E.C. Young, *The Function of Credit in Modern Agriculture*, 23 J. OF FARM ECONOMICS 52 (1933); Andrew Martin, *Biggest Farms Still Harvest Subsidies: Congress Is Told Loophole Hurts Small Operations*, CHI. TRIBUNE, Sept. 4, 2003, at 15.

41. Numerous and extensive federal agricultural laws relate to production and promotion as:

[assisting] in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.

Agricultural Adjustment Act of 1938, 7 U.S.C. § 1282 (2004). Yet other programs include farm credit, commodity credit, the Economic Research Center, Agricultural Marketing

and interactive” and, ultimately, highly contentious and politicized.<sup>42</sup> Domestic food production systems have nonetheless veered away from the intent and goals of New Deal legislation.

Initially, the populism of the period sought protection for independent farming enterprises. Activists were seeking a “shift in agricultural policy toward human welfare.”<sup>43</sup> In contrast, since the New Deal period, the unrelenting vertical integration of food production that incorporates control over every step of the agricultural process, from seed supply to processing to retail has caused the tremendous growth of industrial agriculture.<sup>44</sup> In exchange, the increasing trend of disappearing independent owner control of the commodities produced illustrates how corporate ownership controls the entire process, from seed to table.<sup>45</sup> The vertical integration of food production in causing independent businesses to collapse, are further replacing small farms with large-scale enterprises.

The industrialization of agriculture illustrates a stark contrast: the large corporate food producers of the present, benefiting from the previous rural insurgency that originally produced the farm bill.<sup>46</sup> Vertical integration and its consequences raise the question of whether the initial intent of New Deal legislation – to assist small owner-operated farms – is now obsolete.<sup>47</sup>

The omission of farmworkers from New Deal legislation

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Center, with an endless list of additional programs to ensure the economic health of the sector. In comparing this realm of federal privilege to farm laborers see e.g., Wayne A. Grove, *The Mexican Farm Labor Program, 1942-1964: Government-Administered Labor Market Insurance for Farmers*, 70 AGRIC. HIST. SOC. 302, 302 (1996) (“[G]rowers have used their political, economic, and social powers to reduce the cost of production most amenable to their influence: labor.”).

42. See JONES, *supra* note 2.

43. See, e.g., Mordecai Ezekiel, *Schisms In Agricultural Policy, The Shift in Agricultural Policy Toward Human Welfare*, 24 J. of Farm Econ. 463 (1942); THEODORE SALOUTOS & JOHN HICKS, *TWENTIETH CENTURY POPULISM: AGRICULTURAL DISCONTENT IN THE MIDDLE WEST, 1900-1939* (1951) (providing the history of the New Deal legislation); Guadalupe T. Luna, *The New Deal and Food Insecurity in the “Midst of Plenty,”* 9 DRAKE J. OF AGRIC. LAW 213 (2004) (emphasis on New Deal legislation located in the Franklin D. Roosevelt archives).

44. Producers tout vertical integration as promoting economic efficiency, which, in turn, drives food costs down. See, e.g., U.S. DEP’T OF AGRIC., *VERTICAL COORDINATION OF MARKETING SYSTEMS, LESSONS FROM THE POULTRY, EGG AND PORK INDUSTRIES* (2002).

45. Farming operations consist of varying sizes but in general large-scale production enterprises have overtaken the smaller operations. See, e.g., U.S. DEP’T OF AGRIC., *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY* (2005).

46. See, e.g., U.S. DEP’T OF AGRIC., *VERTICAL COORDINATION IN THE PORK AND BROILER INDUSTRIES: IMPLICATIONS FOR PORK AND CHICKEN PRODUCTS* (1999).

47. *Id.*

moreover reveals yet another instance where law facilitates harm to a group vital to the agricultural sector.

### B. New Deal Omissions

Minorities and their supporters lost their battle to include farmworkers in New Deal legislation.<sup>48</sup> In part, the segregation of the times prohibited farmworker participation in the state and federal organizing events that encompassed the rural insurgency of the times. To their detriment, with ramifications extending into the present, Congress purposely omitted farmworkers and sharecroppers from the protective legislation of the 1930s.<sup>49</sup> Employers, moreover, employed an arsenal of violence, both “legal” and extra-legal methods, to thwart workers’ attempts to improve the terms and conditions of agricultural employment.<sup>50</sup> To the present, federal law excludes agricultural workers from their right to organize for improved working conditions of employment.<sup>51</sup> This exclusion opened the door to an agricultural culture of impunity that has continued to harm farmworkers since the enactment of the New Deal legislation in the 1930s.<sup>52</sup> Consequently, the adverse working conditions and unsanitary housing that plagued workers in the past continue even today.

This article next examines the contrast between the legislative process’s lack of care for workers and its solicitude to meet the labor demands of agricultural employers.

### C. Agricultural Employer Access to Farm Laborers

Food production goals require a significant workforce to cultivate and harvest crops.<sup>53</sup> Slaughterhouses, factory poultry farms and other large-scale and small-scale food production systems

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48. As the legislative history shows, “the doctrine of legislative exceptionalism” characterized the exclusion of agriculture from New Deal legislation. See ERNESTO GALARZA, *MERCHANTS OF LABOR, THE MEXICAN BRACERO STORY* 106 (1964) (referencing Carey McWilliams’ “Great Exception” model characterizing agribusiness exception as “common principles of social legislation” and the “basic tenet of free enterprise.”).

49. See, e.g., DWIGHT MACDONALD, *HENRY WALLACE: THE MAN AND THE MYTH* 4748 (2d ed. 1948) (asserting that including farmworkers would have been a “hot potato”).

50. See, e.g., *Johnson v. State*, 126 S.W.2d 289 (1939).

51. National Labor Relations Act, 29 U.S.C. § 152(3) (2012) (“shall not include any individual employed as an agricultural laborer”).

52. See, e.g., Dennis N. Valdés, *Legal Status and The Struggles of Farmworkers in West Texas and New Mexico*, 22 *LATIN AM. PERSP.* 117 (1995).

53. See, e.g., Kandel, *supra* note 1, at iii (regarding the need for farmworkers in harvesting, cultivating and preparing acreage for fruits and vegetables, as well as general employment in the agricultural sector).

also require a large labor force.<sup>54</sup> To meet agricultural labor needs, a wide network of domestic and international laws as enumerated below facilitate grower access to agricultural laborers.

Immigration law, for example, has restricted entry into the United States while simultaneously allowing exemptions to permit the entry of foreign-born laborers for agricultural employment. At times, moreover, the agricultural sector turns to prisoners to meet its labor demands. Hand labor is critical with perishable produce, which requires careful harvesting and coupled with the lack of federal protections of the workforce provides a leeway to exploit a workforce. This agricultural template in turn underscores Congress' response to the pleas of growers and producers for widespread cheap labor.<sup>55</sup> Farming is an expensive enterprise, and without a large population of laborers to cultivate fields or harvest crops, agricultural enterprises would risk financial ruin.<sup>56</sup>

One further example of legislation affecting agricultural employers and workers is the Migrant and Seasonal Agricultural Workers Protection Act ("MSPA").<sup>57</sup> The MSPA arose from the egregious hardships that labor contractors and others imposed on seasonal and migratory farm laborers.<sup>58</sup> The Farm Labor Contractor Registration Act of 1964, which Congress repealed in 1983 and replaced with the MSPA, facilitated the employment of farm laborers.<sup>59</sup> As part of a multi-pronged effort to expand the MSPA's

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54. See, e.g., *Id.* at 6; WILLIAM G. WHITTAKER, CONG. RESEARCH SERV., RL33002, LABOR PRACTICES IN THE MEAT PACKING AND POULTRY PROCESSING INDUSTRY: AN OVERVIEW (2006).

55. A large labor history reveals that when legislators introduce favorable legislation to improve farmworker conditions, the opposition is significant. See, e.g., Beth Lyon, *The Unsigned United Nations Migrant Worker Rights Convention: An Overlooked Opposition to Change the "Brown Color" Migrant Paradigm*, 42 N.Y.U. J. INT'L L. & POL. 389 (2010); Madsen, *supra* note 16.

56. See *Pigford v. Glickman*, 185 F.R.D. 82, 86 (1999) ("Farming is a hard way to make a living."). Alabama's anti-immigration legislation has produced dire economic consequences for growers and producers. Beason-Hamman Alabama Taxpayer and Citizen Protection Act, *supra* note 5. For example, the legislation induced the fleeing of the State's undocumented and United States citizen workforce of Mexican descent and left many of their employers at risk to economic ruin. Growers and producers are experiencing financial losses with crops left in the fields.

57. 29 U.S.C. § 1801 (2010).

58. *Id.* Notwithstanding the new legal process and requirements, extensive violations occur. *Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997) (cucumber growers charged with FLSA, MSPA and farm labor contractor violations). See also Matthew Webster, "Jobs Americans Won't Do," *Our Farming Heritage, Hazardous Harvest, and A Legislative Fix*, 29 J.L. & INEQUALITY 249 (2011).

59. See, e.g., 29 U.S.C. § 1801 (obligating registration procedures with the Department of Labor); WILLIAM G. WHITTAKER, CONG. RESEARCH SERV., RL33372, MIGRANT AND SEASONAL AGRICULTURAL WORKERS: PROTECTIVE STATUTES (2007) (farm

purpose as remedial legislation, the MSPA authorizes the "maintenance of a private right of action for aggrieved workers through damages or injunctive relief."<sup>60</sup> Notwithstanding legislative intent, the new procedures required of labor contractors under the MSPA have failed to remedy workers' conditions.<sup>61</sup>

MSPA's remedial provisions to protect workers, render nonetheless case-by-case rulings that escape application to the broader class of farmworkers.<sup>62</sup> The MSPA grew out of the heinous treatment of workers, which ranged from slavery to deductions from salaries for workers' room and board.<sup>63</sup> Yet the MSPA's exemption for small enterprises that employ less than "five hundred man days" hides a workforce that the MSPA fundamentally should protect.<sup>64</sup> The MSPA in contrast is inadequate to curb the systemic and ongoing egregious harms confronting workers.<sup>65</sup> Where legal representation is available, litigation under the statute reveals consistencies throughout the decades. Specifically and without constraint farmworkers' complaints range from failure to compensate workers,<sup>66</sup> adverse housing conditions,<sup>67</sup> labor contractors' failure to register, false recruiting promises, and to a host of other complaints.<sup>68</sup>

Food producers additionally benefit from a vast network of federal exemptions from health, safety and labor laws that exclude

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labor contractor amendment history).

60. 29 U.S.C. § 1854 (2006).

61. *Id.*

62. *See, e.g.,* Renteria Marin v. Ag-Mart Produce, Inc., 537 F.3d 1321, 1326 (11th Cir. 2008) ("[MSPA] is a remedial statute and should be construed broadly to effect its humanitarian purpose."). An endless stream of reports highlights harmful working conditions that continue year after year. *See, e.g.,* U.S. Gov't Accountability Office, *supra* note 6 (harmful conditions generated in part from exemptions and weak enforcement mechanisms); *Cf. DEPT OF MICH. CIVIL RIGHTS, supra* note 6, at 9.

63. H.R. Rep. 97-885 (1982).

64. 29 U.S.C. § 1803(a)(1) (2006); *See also* Beth Lyon, *Farm Workers in Illinois: Reforms and Opportunities for the Legal Academy to Assist Some of the State's Most Disadvantaged Workers*, 29 S. ILL. U.L.J. 263 (2005) (explaining in part the background of the small family farm exemption).

65. *See, e.g.,* Escobar v. Baker, 814 F. Supp. 1491 (1993) (failure to depose farmworkers resulted in their dismissal from the instant case).

66. *See, e.g.,* Reyes v. Remington Hybrid Seed, Inc., 495 F.3d 403 (7th Cir. 2007) (lack of compensation with "dilapidated and crowded housing"); *California: Census Housing, RURAL MIGRATION NEWS* (July 2002 Volume 8 Number 3), [http://migration.ucdavis.edu/rmn/more.php?id=592\\_0\\_2\\_0](http://migration.ucdavis.edu/rmn/more.php?id=592_0_2_0).

67. *See, e.g.,* Rodriguez et al., v. Carlson, 943 F. Supp. 1263 (1996) (due to their preference for hand-detassling of corn, the farmers intentionally failed to comply with licensing of a migrant camp).

68. *See, e.g.,* Estados Unidos Mexicanos v. DeCoster, 229 F.3d 332, 334 (1st Cir. 2000).

farm laborers.<sup>69</sup> For example, Congress enacted the National Labor Relations Act to guarantee some parity of power between individual workers and their employers; the NLRA specifically excluded farmworkers from its protections.<sup>70</sup> In contrast with the reformist ideals of the New Deal, federal agricultural law bypassed farm laborers and sharecroppers, a situation that persists to the present day.<sup>71</sup> Farm laborers, sharecroppers and others notwithstanding the segregation of the times attempted to unionize and protest but met with legal repression and mob violence.<sup>72</sup> Employers often fired farmworker union members, which also undermined unionization efforts.<sup>73</sup> Adopted when farming was primarily owner operated, the NLRA's exemption is difficult to reconcile with the present agricultural industry's privileged enjoyment of the law's exemption.<sup>74</sup>

In the present, a few states recognize the right of agricultural laborers to organize.<sup>75</sup> However, the fact that federal law fails to protect farmworkers from employer retaliation against those who organize for beneficial changes to the terms and conditions of their employment stymies the universal application of labor standards across the entire United States. Further, while several states permit organizing, case law interpreting the legislation lacks uniformity and consistency.<sup>76</sup>

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69. See, e.g., OSHA partially exempts employers from reporting requirements if they employ less than ten employees. 29 C.F.R. § 1904.1 (2012).

70. See National Labor Relations Act, 29 U.S.C. § 152(3) (2006) (exclusion of farm laborers from its protection). The Social Security Act of 1935 and Fair Labor Standards Act of 1938 also excluded farmworkers, foreign agricultural workers. 42 U.S.C.A. § 410 (West 1935); 29 U.S.C.A. § 203 (West 1938).

71. See National Labor Relations Act, 29 U.S.C. § 152(b) (1973) (exclusion of farm laborers).

72. See, e.g., *Ball v. State*, 95 S.W.2d 632 (1936) (legal tactics employed against unionization efforts of Southern Tenant Farmers' Union); *Johnson v. State*, 126 S.W.2d 289 (1939) ("night riding charges" against union organizers); *Farm and Cannery Workers Mass Meeting*, NAT'L AGRIC. LIBRARY (1935) (flyer calling for a meeting at a local meeting hall in response to the murder of an agricultural worker), <http://www.nal.usda.gov/speccoll/collect/history/msmtgpg.htm>.

73. See, e.g., *Vasquez v. Bannworth, Inc.*, 707 S.W.2d 886 (1985) (termination from employment due to union affiliation).

74. U.S. DEP'T OF AGRIC., *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE & FARM POLICY* (2005).

75. See, e.g., California Agricultural Labor Relations Act of 1975, Cal. Lab. Code § 1152 (West 2011). While agricultural exemptions in the National Labor Relations Act preclude collective bargaining on the federal level, the state has its own set of farm labor laws. Recognizing the rights of farmworkers, the states permit at a minimum to join unions and to seek improvements in the terms and conditions of employment. The impoverished circumstances of the majority of the population nonetheless call into question the legal strength of the legislation.

76. See, e.g., *Id.* § 1152. The inconsistent rulings interpreting the code nonetheless lack the uniformity and certainty valued in law.



Additional legislation beneficial to growers follow from a gap in the exemptions permitted small owner operators from the reporting requirements of the Fair Labor Standards Act ("FLSA").<sup>77</sup> Through the FLSA, congress sought to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for [the] health, efficiency and general well-being of workers."<sup>78</sup> The FLSA ultimately recognized minimum wage levels for farmworkers.<sup>79</sup> The legislation, however, disqualifies agricultural workers from overtime pay.<sup>80</sup> The statute therefore contributes to the unsustainable wages that farmworkers receive.<sup>81</sup>

Addressing the full measure of agricultural exemptions from federal and state law is beyond the scope of this article. Yet these critical exemptions underscore the breadth of the privilege that United States law gives agricultural employers. Specifically, the agricultural sector's tremendous wealth has further accrued from collective mutual aid among agricultural enterprises. Public law authorizes the collective activities of "[f]armers, planters, ranchmen, dairymen, [and] nut or fruit growers . . ." <sup>82</sup> As Congress provided, such groups can "form "associations, corporate or otherwise[,] with or without capital stock[,] to collectively process, prepare for market, handle, and market [produce] in interstate and foreign commerce."<sup>83</sup> This constitutes federally authorized exemption from anti-trust law

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77. See, e.g., Fair Labor Standards Act of 1938, 29 U.S.C. § 213 (2004); *Garcia v. Frog Island Seafood, Inc.*, 644 F. Supp. 2d 696 (E.D.N.C. 2009) (demonstrating in part exemptions permitted employers).

78. Congressional Finding and Declaration of Policy, 29 U.S.C. § 202 (2006).

79. Fair Labor Standards Act of 1938, 29 U.S.C. § 213(a)(6) (2006). See also Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1335 (1987).

80. 29 U.S.C. § 213(a)(6).

81. Under the Fair Labor Standards Act, farmworkers qualify for minimum wage levels but commonly work less than a full year with their salaries linked to the federal poverty line. 29 U.S.C.A. § 203(f) (West 2004). See also U.S. DEP'T OF LABOR, NATIONAL AGRICULTURAL WORKERS SURVEY: HIRED FARM LABOR, WAGES AND PAYROLL TABLE 7 (2007). Federal minimum wage rates are \$7.25 per hour but some states recognize variances. 29 U.S.C.A. § 206(a) (West 2006). See e.g., *Florida, Southeast*, RURAL MIGRATION NEWS, (January 2012 Volume 18 Number 1), [http://migration.ucdavis.edu/rmn/more.php?id=1658\\_0\\_3\\_0](http://migration.ucdavis.edu/rmn/more.php?id=1658_0_3_0)).

82. 7 U.S.C. § 291 (2006). The statute protects collective activity for beneficial gain as well as for "fixing prices." *Farmdale Farms, Inc. v. Yankee Milk, Inc.*, 635 F.2d 1037 (2nd Cir. 1980) (holding that the Capper-Volstead Act gave associations of cooperatives the right to fix prices and protects monopoly power resulting from formation of agricultural cooperatives). See also Jim Chen, *American Ideology*, 48 VAND. L. REV. 809 (1995). Similar farmworker attempts to improve their working terms and conditions have witnessed, in the alternative, injunctions and criminal charges that hinder their attempts to engage in collective action. See e.g., *Johnson v. State*, 126 S.W. 2d 289 (Ark. 1939).

83. 7 U.S.C. § 291.

that would otherwise prohibit such monopolies from organizing for collective gain has given tremendous wealth to growers, producers and agricultural collectives. Taken together, such exclusions make federal law unavailable to the farmworkers they employ.<sup>84</sup>

Further exemptions that benefit agricultural employers but harm their employees extend to federal immigration law. During periods of restrictive immigration laws that have systematically denied entry into the United States, Congress has consistently carved out exceptions to accommodate agricultural labor needs.<sup>85</sup> Immigration law for example, has facilitated the employment of foreign agricultural laborers, based in part on the agricultural sector's demands and insufficient number of U.S.-born agricultural workers. Growers have historically criticized the inadequate access to workers, even under current immigration laws.<sup>86</sup> Immigration programs, include the H-2A Program and the Seasonal Agricultural Workers Act, for food production purposes.<sup>87</sup> Such immigration programs authorize the entry of foreign laborers where agricultural employers are unable to procure sufficient domestic workers for agricultural tasks. Yet the legislation also masks why domestic

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84. *But see* Agricultural Fair Practices Act of 1967, 7 U.S.C. §§ 2301-2305 (2011) (antitrust legislation not applicable to labor organizations). *See also* *Bodine v. UFW Org. Comm.*, 494 F.2d 541 (9th Cir. 1974) (growers and producers challenging farmworkers unionization attempt involved in a grape boycott); Clayton Act, 15 U.S.C. § 17 (2011) (antitrust laws not applicable to labor organizations).

85. Exemptions from strict immigration laws that otherwise tighten the opportunity to enter the U. S. are permitted the sector. *See e.g.*, Immigration and Nationality Act, 8 U.S.C.A. § 1101(a)(15)(H)(ii)(a) (West 2011) (providing temporary visas for certain unskilled laborers to meet agricultural and related industrial needs. Under the INA, qualified agricultural labor also includes employment in slaughterhouses and meatpacking plants.). The INA's description of agricultural workers further encompasses "persons who manage farms for employers on a paid basis, supervisors of farmworkers, and farm and nursery workers." Kandel, *supra* note 1, at 49.

86. *See e.g.*, RURAL MIGRATION NEWS, *supra* note 83. The resistance of domestic applications caused one grower to assert that:

We hired the immigrants because we had bad experiences when we tried hiring locals. I've lost count of all the locals I had to fire because they didn't want to work; they wanted to just stand around and watch someone else do the work. They would show up late a lot of mornings or not even come to work at all.

*Id.*

87. Throughout U.S. history, Congress has responded to the entreaties of agricultural employers both domestically and internationally. *See e.g.*, Otey M. Scruggs, *Evolution of the Mexican Farm Labor Agreement of 1942*, 34 AG. HIST. 140 (1960) (discussing the evolution of the *braceros* program between the Mexican and U.S. governments); Madeleine Sumption, *Filling Labor Shortages Through Immigration: An Overview of Shortage Lists and Their Implications*, MIGRATION INFO. SOURCE (Feb. 2011), <http://www.migrationinformation.org/Feature/display.cfm?ID=828>.

workers are of the adverse terms and conditions of employment in agriculture do not seek employment as farmworkers. Agricultural law's reach into international labor markets has thereby produced a steady stream of farm laborers, primarily from Mexico.<sup>88</sup> This consequence has caused labor economist Linda Levine to observe, "The connection between farm labor and immigration policy is a longstanding one, particularly with regard to U.S. employers' use of workers from Mexico."<sup>89</sup>

Notwithstanding the agricultural temporary visa programs within immigration law, such visas are difficult for workers to obtain and agricultural labor demands vastly exceed the number of visas available; therefore, growers often employ undocumented workers, in violation of federal law.<sup>90</sup> Because this segment of the workforce must hide from immigration law enforcement officials, they are often invisible to the agencies enforcing the few rules that would otherwise protect such workers.<sup>91</sup> The fear of retaliation

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88. 8 U.S.C.A. § 1101(a)(15)(H)(ii)(b). Agricultural jobs vary, including employment in slaughterhouses and poultry plants. See e.g., *Meat and Migrants*, RURAL MIGRATION NEWS, [http://migration.ucdavis.edu/rmn/more.php?id=1038\\_0\\_2\\_0](http://migration.ucdavis.edu/rmn/more.php?id=1038_0_2_0) (last visited May 1, 2012). Sender states from Mexico references the countries of origin of farmworkers by employers into various locales with workers arriving into the U.S. from Mexico, Guatemala and Central America. See e.g., PHILIP MARTIN, IMMIGRATION REFORM: IMPLICATIONS FOR FARM WORKERS AND COMMUNITIES (2011) available at <http://migration.ucdavis.edu/cf/files/2011-may/conference-report.pdf>. This relationship can also produce conflict between U.S. citizens and laborers from foreign nations where the claims of citizens cannot represent the claims of others such as migrants from foreign nations. See *Jimenez v. Servicios Agricolas Mexicanos, Inc.*, 742 F. Supp. 2d 1078 (D. Ariz. 2010); *Salazar-Martinez v. Fowler Bros., Inc.*, 781 F. Supp. 2d 183 (W.D.N.Y. 2011) (non-H-2<sup>a</sup> worker disallowed from representing class).

89. See e.g., LINDA LEVINE, CONG. RES. SERV., RL 30395, FARM LABOR SHORTAGES AND IMMIGRATION POLICY 2 (2007).

90. Enumeration is difficult but some estimates depending on the commodity include "roughly one half of crop farmworkers are not authorized to working the United States." See, e.g., Hertz, *supra* note 1. The Pew Hispanic Center places California as the state with the largest population of unauthorized workers at 2.55 million. PEW HISPANIC CTR., UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE Trends 15 (2011), available at <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/>; Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (prohibits the employment of undocumented workers). Growers commonly assert the "bottom line: domestic citizens don't want to do farm work." Leah Rae, *Immigrants in Suburbia*, THE J. NEWS, Oct. 3, 2004, at A1. See also LEVINE, *supra* note 91, at 1 (in light of overly restrictive domestic and international law, closing the nation's borders, some growers are asserting that they will leave farming).

91. Some federal courts have held that some U.S. labor laws (Title VII of the Civil Rights Act) cover undocumented workers. See, e.g., *EEOC v. Tortilleria "La Mejor"*, 758 F. Supp. 585, 590 (E.D. Cal. 1991). Nonetheless, in 2002, the U.S. Supreme Court held that the National Labor Relations Board was not competent to award undocumented workers court-awarded reinstatement and back pay for violations of the Fair Labor Standards

moreover often prevents workers from reporting violations of minimum wage rates, occupational standards, or adverse housing conditions.<sup>92</sup> Workers' isolation from legal services and the inadequacy of legal aid to assist them also hinders workers from seeking protection from harmful circumstances.<sup>93</sup> In sum, agriculture tends to fall outside of the legal regulatory regime, which promotes a culture of lawlessness places this population at risk of unfair labor practices, including human trafficking and slavery.<sup>94</sup>

Within this framework, the exemptions federal law provides thereby structurally produce harmful circumstances for innumerable farmworkers. Low wage levels, the inability to organize for beneficial terms and conditions of employment hinder the sustainability of farm work.<sup>95</sup> In turn, this construct offers little choice but forces workers to reside in deficient and harmful housing conditions.<sup>96</sup> Additional factors to their conditions extend moreover

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Act. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 151-52 (2002). See, e.g., Christopher Ho & Jennifer C. Chang, *Drawing the Line After Hoffman Plastic Compounds, Inc. v. NLRB: Strategies for Protecting Undocumented Workers in the Title VII Context and Beyond*, 22 HOFSTRA LAB. & EMP. L.J. 473 (Spring 2005) (analyzing the impact of the first case to bar certain relief under the NRLA to undocumented workers).

92. See, e.g., DEP'T OF MICH. CIVIL RIGHTS, *supra* note 6, at 21 (workers cite fear of retaliation).

93. Legal representation is often elusive for aggrieved workers with congress challenging the use of Legal Services to challenge agricultural employers. See generally U.S. GEN. ACCOUNTING OFFICE, HRD-90-144, LEGAL SERVICES CORPORATION: GRANTEE ATTORNEYS HANDLING OF MIGRANT FARMWORKERS DISPUTES WITH GROWERS (1990) (a report studying the efficiency and shortfalls of the Legal Services Corporation, with respect to services provided to farmworkers); Legal Aid Servs. of Or. v. Legal Servs. Corp., 561 F. Supp. 2d 1187 (D. Oregon 2008) (case analyzing the Legal Aid Services provides to clients, including farmworkers, in Oregon).

94. See e.g., *United States v. Garcia*, No. 02-CR-1105-01, 2003 WL 22938040, at \*1 (W.D.N.Y. Dec. 2, 2003) (charging defendant *inter alia* with "forced labor trafficking in persons" for housing workers in "isolated, overcrowded and unsanitary conditions" who were "required 'to work in the fields of local growers.'"). See also *Farms Charged With Human Trafficking*, N.Y. TIMES, April 20, 2011, <http://www.nytimes.com/2011/04/21/us/21brfs-Washington.html?scp=1&sq=farms%20charged%20with%20human%20trafficking&st=cse> (California farm labor contractor Global Horizons Inc., also with farms in Washington and Hawaii, charged with human trafficking by "confiscating passports and threatened [workers] with deportation . . . if they complained about conditions."). Complaints against "discrimination and substandard conditions in Mississippi and Texas, additionally, caused the EEOC to sue the agricultural employers of the workers. See *Slavery Is Not Just The Shameful Stuff of History Books, Not in Florida*, PALM BEACH POST (2011), available at <http://www.palmbeachpost.com/moderndayslavery/index.html> (three part series discusses modern-day slavery in the context of Florida's citrus fields).

95. See U.S. DEP'T OF AGRIC., 2007 CENSUS OF AGRICULTURE (2007).

96. See e.g., U.S. DEP'T OF HOUS. & URBAN DEV., FACTS ABOUT FARMWORKERS AND COLONIAS (2008), available at <http://fhadirect.hud.gov/groups/farmwkercolonia.cfm> (reporting 33% of farmworkers pay more than 1/3 of their income for housing that is also residing in moderate to severely substandard housing). See also U.S. DEP'T OF HOUS. &

to pesticides,<sup>97</sup> dangerous equipment, or harmful environmental exposure, workers thereby labor and live under dangerous conditions.<sup>98</sup>

Farmworker exposure to pesticides, for example, inspired litigation against the use of toxic chemicals in the preparation of strawberry beds. Farmworker Jose Hidalgo Ramon, a named plaintiff challenging the use of methyl iodide for example asserted:

It's farmworkers like me who become sick. . . . As a strawberry picker, I have worked near many pesticide applications. First, we smell the pesticides. Then our eyes burn, our noses run and our throats hurt. I'm against using methyl iodide because it's already too dangerous in the fields, we don't need new, even more dangerous toxins.<sup>99</sup>

Environmental stresses extending to high temperatures induce additional heat related illnesses and compound toxic exposures.

At times, for example, workers are in fields harvesting crops during critically high temperatures and their employers do not allow farmworkers shade breaks from the heat.<sup>100</sup> The death of seventeen-

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URBAN DEV., CASE STUDY: FARMWORKER HOUSING, TORRES MARTINEZ DESERT CAHUILLA INDIANS (2012), available at <http://www.hud.gov/local/shared/working/groups/frmwrcoln/casestudies/torres.cfm?state=nm> (receiving federal funds to construct housing for farmworkers).

97. The Environmental Protection Agency is responsible for monitoring pesticide applications in farming communities. Several states also have adopted legislation to monitor pesticides. See e.g., California Farm Worker Health Act, Cal. Health & Safety Code § 105206 (West 2010). Yet in some instances, states have made decisions harmful to farmworkers, such as state approval of employers' use of methyl iodide, an agent known to cause health problems, on strawberry fields. See e.g. Julie Cart, *Farmworkers Challenge Approval of Methyl Iodide on Strawberry Fields*, L.A. TIMES GREENSPACE (Jan. 3, 2011, 5:46 PM), <http://latimesblogs.latimes.com/greenspace/2011/01/state-approves-controversial-pesticide.html>; *California Sued to Block Strawberry Fumigant Methyl Iodide*, ENVTL. NEWS SERV. (Jan. 5, 2011), <http://www.ens-newswire.com/ens/jan2011/2011-01-05-091.html>. The workers, the Pesticide Action Network, United Farmworkers along with others are challenging state approval of the toxin in violation of the California Environmental Quality Act, the California Birth Defects Prevention Act, and the Pesticide Contamination Prevention Act. *Id.* Presently farmworkers and environmental activists have filed a lawsuit challenging its adoption. See *Farmworkers & Environmental Health Organizations File Methyl Iodide Lawsuit*, PESTICIDE ACTION NATION (Monday, January 3, 2011), <http://www.panna.org/press-release/farmworkers-environmental-health-organizations-file-methyl-iodide-lawsuit>.

98. Extensive legislative and socio-economic studies have illustrated the harmful housing conditions of impoverishment and agricultural employment. See generally ERNESTO GALARZA, *SPIDERS IN THE HOUSE, WORKERS IN THE FIELDS* (1970) (California grape workers went on strike based on poor living and working conditions; the Congressional committee that investigated the strike produced a report that strongly denounced the National Farm Workers Union); *Eliserio v. Floydada Hous. Auths.*, No. L-05-cv-4, 2008 WL 901493 (S.D. Tex. Mar. 31, 2008).

99. *Eliserio*, 2008 WL 901493.

100. In response to the thousands of heat related occupational illnesses the

year-old farmworker Maria Isabel Vazquez Jimenez, who perished from heatstroke, underscores the lack of heat breaks and isolation from medical care.<sup>101</sup> Without robust enforcement of requisite shade breaks and immediate health care access when medical emergencies arise, these dangerous conditions make deaths more likely to occur.<sup>102</sup>

The collection of federal laws promoting the agricultural sector exposes the links between food production and agricultural workers. Domestically and internationally, federal law constructs the working relationships between agricultural employers and farm laborers. The attendant payoff makes a variety of commodities available for consumption, yet at the expense of those who help feed the nation.<sup>103</sup>

This article next examines one major indicator of the power disparity in these working relationships: insufficient and unsafe housing.

#### D. Farmworker "Access" to Housing

Low wages compound the lack of suitable and affordable housing for farmworkers with workers earning sporadically less than \$10,000 per season.<sup>104</sup> The federal and state inspection and law

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Department of Labor and Occupational Safety & Health Administration have "launched an educational campaign seeking to prevent harm to workers. See *Water, Rest, Shade Campaign*, Occupational Safety & Health Administration, <http://www.osha.gov/SLTC/heatillness/index.html#prevent> (last visited May 1, 2012). See also David Olson, *Shade, Water Ordered for Workers*, THE PRESS ENTERPRISE, June 24, 2008, at C04 (a temporary restraining order ordered against Magana Labor Services, Inc., for retaliation against workers complaints over the absence of heat breaks and water and in violation of state law).

101. For information on Maria Jiménez's death, see *Maria's Story*, UNITED FARMWORKERS UNION (05/30/2008), [http://www.ufw.org/\\_board.php?mode=view&b\\_code=hotissue&b\\_no=4304](http://www.ufw.org/_board.php?mode=view&b_code=hotissue&b_no=4304) (last visited Feb. 26, 2012). See also CTRS. FOR DISEASE CONTROL, HEAT RELATED DEATHS AMONG CROP WORKERS—1992-2006, MORBIDITY AND MORTALITY WEEKLY REPORT (2008), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm>.

102. Press Release, Am. Civil Liberties Union, Landmark Lawsuit Accuses State of Failing to Protect Farmworkers From Heat-Related Deaths and Illness, (July 30, 2009), available at <http://www.aclu-sc.org/releases/view/102982>. Farmworker advocates moreover assert that California OSHA agencies fail to protect workers employed in difficult environmental conditions. See e.g., *New Cal-OSHA Heat Regs Still Won't Work*, Daily Kos (June 9, 2009, 7:23 AM), <http://www.dailykos.com/story/2009/06/22/744613/-New-Cal-OSHA-heat-regs-still-wont-work>.

103. Employers are supposed to provide housing to employees holding agricultural visas, but courts have also found employers to be in violation of such legal requirements. See e.g., *Farmer v. Emp't Sec. Comm'n of N.C.*, 4 F.3d. 1274, 1284 (4th Cir. 1993) (housing of foreign workers provided only where it is the prevailing practice).

104. See, e.g., U.S. DEP'T OF AGRIC., 2007 CENSUS OF AGRICULTURE (2007). One avenue that unions have pursued is involvement in the recruitment of farm laborers into the U.S. See e.g., Dale Yurong, *UFW Signs Pact with Michoacán to Recruit, Instead of Advocating on their Behalf Once They Get Here*, ABC30 (April 18, 2008), <http://abclocal.go.com/kfsn/>

enforcement agencies' disregard, moreover, the unsanitary infrastructures aggravates the housing conditions of farmworkers across the United States.

In a few instances, federal housing grants are available to fund farmworker housing.<sup>105</sup> Yet growers are not obligated to contribute to the grants, and the demand exceeds availability.<sup>106</sup> At other times, local residents oppose farmworker housing developments.<sup>107</sup> Local residents moreover often use anti-immigrant ordinances to target farmworkers, whom residents perceive as outsiders, even though many farmworkers are United States citizens.<sup>108</sup> Additionally, the housing that farmworkers do find is often inhospitable.

Farmworkers also complain that shopping expeditions and other excursions subject them to racial profiling by Border Patrol agents and other law enforcement officers.<sup>109</sup> This profiling persists even in the Midwest, over a thousand miles from the southern geographical border, where border patrol officials target people they suspect of having unlawfully entered the United States.<sup>110</sup> Officers use racial profiling to stop anyone who meets law enforcement perceptions of people who might be undocumented.<sup>111</sup>

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story?section=news/local&id=6088046. Such a program nonetheless obligates critical care in its design, development and implementation. This results from the heinous history of such guest worker programs in the past where upon their arrival they would face numerous breaches of contract claims. Even those holding official immigration status struggle securing and expanding their limited legal rights. *See e.g.*, *Garcia v. Frog Island & Seafood Inc.*, 644 F. Supp. 2d 696, 701 (E.D.N.C. 2009) ("alleged violations of minimum wage provision of [FLSA]").

105. *See generally* DEP'T OF HOUS. & URBAN DEV., RURAL HOUSING AND ECONOMIC DEVELOPMENT GRANT, available at <http://www.hud.gov/offices/cpd/economicdevelopment/programs/rhed/index.cfm> (available to non-profits for housing grants, explaining conditions and process for receiving the grants).

106. NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY *supra* note 8; MARC BRENNEN, FARMWORKERS DESERVE DISCRIMINATION-FREE HOUSING, WASHINGTON STATE HUMAN RIGHTS COMMISSION (2007). *See also* RURAL HOUSING AND ECONOMIC DEVELOPMENT GRANT, *supra* note 107.

107. *See, e.g.*, U.S. Gov't Accountability Office, *supra* 11, at 19 (listing opposition to proposed rural housing).

108. A gamut of anti-immigrant legislation is attempting to curtail what the public often perceives as undocumented entry into the U.S., without regard to the complex population of migrants who do hold lawful status. *See, e.g.*, S.B. 1070, *supra* note 16. Repeatedly, the ordinances violate the principle of federal preemption on national immigration policy. Many of the municipalities' highly politicized rhetoric misrepresent the realities behind the perceived threat. *Lozano v. City of Hazelton*, 496 F.3d 170 (2010); Press Release, Latino Justice, Hazelton Trial Ends and the Mayor's Message is - Blame the Powerless (Mar. 22, 2006), available at [http://latinojustice.org/briefing\\_room/press\\_releases/hazelton\\_trial\\_ends/](http://latinojustice.org/briefing_room/press_releases/hazelton_trial_ends/).

109. NUESTRAS VOCES LATINAS, *supra* note 18.

110. *Id.*

111. Peter Applebome, *Police Gang Tyrannized Latinos, Indictment Says*, N.Y. TIMES,

Laws provide some housing for immigrant workers, in limited situations. For example, the law permits farmers “participating in [immigration] programs” to provide “family housing to temporary agricultural workers[,]” but only when it is “the prevailing practice in the area and occupation of intended employment.”<sup>112</sup> Where employers provide migrant farmworker camp housing, the few existing federal laws coupled with the lack of robust enforcement that exist nonetheless set the stage for substandard housing conditions.<sup>113</sup>

The lack of sufficient housing inspections and farm bills’ omission of mandatory housing provisions encourage employers to provide substandard housing. Without inspections, worker camps and other ad hoc housing structures remain out of compliance with the law.<sup>114</sup> In a chilling example, the septic drowning of two-year-old Luis Martinez occurred in an unlicensed migrant camp that was out of compliance with the applicable housing codes. Luis Martinez’s family resided at the Silver Lane Mobile Home Park, in Florida, with an uncovered septic tank. While the exact details are unknown, the lack of inspections opened the door to the death of young Luis.<sup>115</sup>

Inadequate enforcement and the prevailing climate of acceptance expose farmworkers and their families to unsafe, deficient housing, both in rural and urban communities.<sup>116</sup> In exchange for the “privilege” of residing in deficient migrant camps or other units, employers or the farm labor contractors that recruit them charge farmworkers rates exceeding the cost of the housing.<sup>117</sup>

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Jan. 25, 2012, at A1.

112. See e.g., *Farmer v. Emp’t Sec. Comm’n of N.C.*, 4 F.3d 1274, 1284 (4th Cir. 1993); 8 U.S.C.A. § 1101(a)(15)(H)(ii)(a) (West 2011).

113. 29 U.S.C. § 1823 (2006). See also James Prichard, *Some Michigan Camps Won’t Be Inspected In ‘09*, AP Alert (June 27, 2009), available at [http://www.smfws.com/articles2009/june\\_2009/art06272009b.htm](http://www.smfws.com/articles2009/june_2009/art06272009b.htm)

114. Prichard, *supra* note 115.

115. Richard Danielson, *Toddler’s Death Lacks Okay for Workers*, ST. PETERSBURG TIMES, Dec. 2, 2009, at 1B.

116. See e.g., *United States v. Fawley*, 137 F.3d 458, 465 (7th Cir. 1998) (defendant replied “this was the way Mexicans lived” in response to why he provided deplorable living conditions at an exorbitant cost).

117. It is impossible to reconcile the regulations under the United States Department of Labor, Agreement between OSHA and ESA for Migrant and Seasonal Farmworker Housing Inspections with the Michigan Civil Rights Report on Farmworkers. This results in part from the lack of adequate inspections to monitor the deficient housing conditions of farm laborers. See *Agreement Between OSHA and ESA for Migrant and Seasonal Farmworker Housing Inspection*, Occupational Safety & Health Administration (Apr. 19, 1978), [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_id=220&p\\_table=MOU](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=220&p_table=MOU) (ensuring cooperation between OSHA and ESA by meeting housing standards of the Farm Labor Contractor Registration Act); Cf. DEP’T OF MICH. CIVIL RIGHTS, *supra* note 6, at 16 (reporting on living conditions of farmworkers in Michigan).



Wage deduction violates federal and state law, and constitutes wage theft yet enforcement depends on the availability of legal services.<sup>118</sup>

The lack of aggressive enforcement compounds the problem of meager legal protections for farmworkers, rendering federal legislative promises meaningless when employers purposely ignore them.<sup>119</sup> Often, after a long day full of onerous tasks, workers thereby retreat to unsanitary and deficient housing in defective trailers, automobiles, or tents in state parks.<sup>120</sup> At times, these poorly built structures lack screens, windows, and utilities. The unsafe conditions, coupled with crowding, impose additional health hazards to farmworkers and their families.<sup>121</sup>

The gap between the housing regulatory structure and the living circumstances of the agricultural workers who fear retaliation for reporting adverse circumstances further promotes their isolation. In *United States v. Fawley*, for example, authorities only discovered the dire housing conditions in which the nursery's workforce lived, after filing a charge against the owner for "harboring" undocumented workers.<sup>122</sup> This misdirected prosecution of labor violations as immigration violations further perpetuates a climate of fear among immigrant and domestic based workers.

The next section provides one example of a situation where the food production has caused grievous harm, both for domestic and foreign-born farmworkers. In contrast, federal law has given wealth

118. See e.g., *Garcia v. Frog Island & Seafood Inc.*, 644 F. Supp. 2d 696, 716-20 (E.D.N.C. 2009); *Herrera v. Singh*, 103 F. Supp. 2d 1244 (E.D. Wash. 2000); *Caro-Galvan v. Richardson*, 993 F.2d 1500 (11th Cir. 1993); *Legal Aid Servs. of Or. v. Legal Aid Servs. Corp.*, 561 F. Supp. 2d 1187 (funding curtailed ability to represent those in need); *Soler v. G&U Inc.*, 833 F.2d 1104, 1108 (2nd Cir.1987) (deductions from wages allowed to cover for housing); *Snake River Farmers' Ass'n Inc., v. Dep't of Labor*, 9 F.3d 792, 798 (9th Cir. 1993) (disallowing farmworkers from intervening in case).

119. See e.g., *Garcia*, 644 F. Supp. 2d at 703. At times conflict between the jurisdiction and authority of agencies becomes an issue in targeting unsafe housing. See *Peters v. United States*, 853 F.2d 692, 695 (9th Cir.1988).

120. Decade after decade, innumerable studies and case law illustrate the working and housing difficulties of farm laborers. See, e.g., *The County of Riverside*, *supra* note 11 (as well as the 2008 survey); *Edwards v. Johnston County Health Dep't*, 885 F.2d 1215, 1217 (4th Cir. 1989); Jennifer Gordon, *Michigan Housing Laws Should Apply to Farmworkers*, 41 WAYNE L. REV. 1849, 1852-53 (1995).

121. See, e.g., DEP'T OF MICH. CIVIL RIGHTS, *supra* note 6; MINES ET AL., *supra* note 21, at 67; *Rodriguez v. Carlson*, 943 F. Supp. 1263, 1270 (E.D. Wash. 1996) (tents for housing); *Calderon v. Madigan*, 831 F. Supp. 1489, 1490 (D. Idaho 1993); *Edwards*, 885 F.2d at 1225..

122. *United States v. Fawley*, 137 F.3d 458, 465 (7th Cir. 1998). The workers had paid \$2,400 collectively in rent, were over occupied, lacked beds for all of the employees, were in "deplorable shape" and virtually unfit for human habitation, "with trash strewn about, bugs and insects scurrying everywhere, and a penetrating foul odor in the house." *Id.*

and benefits to the region's growers and producers.<sup>123</sup>

The next section specifically focuses on two Indigenous population groups with histories grounded in colonialism and an agricultural template that has long disenfranchised them from control over their own lands.

## II. Agricultural Law Construction Part II: *United States v. Duro*

"I never expected to see this in America."<sup>124</sup>

—Haider Quintero

Current United States agricultural law and policies expedite food production, with attendant economic success for industrial agricultural growers and producers domestically and internationally.<sup>125</sup> Extending the United States' reach into foreign markets, the North American Free Trade Agreement for example created the world's largest agricultural marketplace.<sup>126</sup> The bilateral agreement successfully removed "impediments to agricultural trade" between Mexico, the United States and Canada.<sup>127</sup> Unfortunately, many Mexican former owner-operators of small farms are unable to compete in the global economy<sup>128</sup> and migrate to

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123. See *Subtotal: Farming Subsidies*, *supra* note 24. See also RANDY SCHNEPF, CONG. RESEARCH SERV., RS21970, THE U.S. FARM ECONOMY (2006) (an overview of the wealth of large industrial producers).

124. *The Southland's Third World Slums*, L.A. TIMES, Mar. 26, 2007, at 1, available at <http://articles.latimes.com/2007/mar/26/local/me-trailerpark26>.

125. Agro-industry benefits from sizeable federal contributions. See *Subtotal: Farming Subsidies*, *supra* note 24.

126. See, e.g., NAFTA *supra* note 20. See also JOYCE VIALET, CONG. RES. SERV., 97-714 EPW, IMMIGRATION: THE "H-2A" TEMPORARY AGRICULTURAL WORKERS PROGRAM (1998) (a discussion of the Temporary Agricultural Worker program, allowing foreign agricultural workers to be brought in while still protecting domestic workers).

127. Early reports on the Agreement emphasized the increased benefits to removing restraints on trade with a final compromise made among the three nations of the United States, Mexico and Canada. See U.S. GEN. ACCOUNTING OFFICE, GAO/NSIAD-91-155, U.S.-MEXICO TRADE, IMPACT OF LIBERALIZATION IN THE AGRICULTURAL SECTOR 13 (1991).

128. See generally TIMOTHY A. WISE, THE IMPACTS OF U.S. AGRICULTURAL POLICES ON MEXICAN PRODUCERS (2011), available at <http://www.wilsoncenter.org/publication/subsidizing-inequality-mexican-corn-policy-nafta-0> (discusses an example of the costs to small farmers from NAFTA food policies) [hereinafter WISE, IMPACTS OF U.S. AGRICULTURAL POLICIES]. Brendan M. Case, *Mexican Farmers Facing Hard Times, Cloudy Future Government Says Economy Must Change*, DALLAS. MORNING NEWS (Aug. 9, 2001), <http://www.dallasnews.com/> (resulting from competition with U.S. farmers and a long decline in the prices of corn, sugar, coffee, and other basic crops); Elisabeth Malkin, *NAFTA's Promise, Unfulfilled*, N.Y. TIMES, March 24, 2009, at B1, available at <http://www.nytimes.com/2009/03/24/business/worldbusiness/24peso.html?scp=1&sc>

the United States where they confront inferior housing conditions.<sup>129</sup> Driving small owner-operators in Mexico from their farms, agricultural legislation and global markets promote the interests of large corporate enterprises. The federal credit systems and subsidies that facilitate domestic food production disadvantage producers outside the United States. In contrast, Mexico does not subsidize its farmers.<sup>130</sup> The forces of global competition have thus caused an elevated risk of forfeiture in Mexico, and international agreements with the United States consistently aggravate the situation.<sup>131</sup> Eventually, these dispossessed Indigenous farmers provide a guaranteed labor pool for growers and producers within the United States.

The Purépecha people's employment in the agricultural sector and without adequate housing options illustrates how food legislation and policies facilitate the ongoing, systemic colonization of Indigenous populations.<sup>132</sup>

#### A. Duroville

California produces over four hundred different commodities, comprising "nearly half of U.S.-grown fruits, nuts and vegetables."<sup>133</sup> Such massive production requires a large population

q=NAFTA%27s%20promise%20elisabeth%20malkin&st=cse. Farmers in other countries, moreover, do not have the kind of vast regulatory state that facilitates agricultural enterprises in the U.S. See e.g., *United States – Subsidies on Upland Cotton, Dispute Settlement: Dispute DS267*, World Trade Org. (Nov. 19, 2009), [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds267\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm).

129. A recent complaint charged that "plaintiffs were housed in insect-infested, over-crowded trailers with holes in the ceilings and walls through which water leaked when it rained. . . . windows and doors on the trailers were not closed to the outside; screens were torn and not functional." Complaint, *Lopez vs. Jimmy Carroll Fish* (E.D. Tenn. Apr. 12, 2011).

130. Additional costs to Mexico encompass the negative impact on the environment on both sides of the geographic border and the lack of comparable United States credit policies to assist independent owner operators. See e.g., TIMOTHY A. WISE, *AGRICULTURAL DUMPING UNDER NAFTA: ESTIMATING THE COSTS OF U.S. AGRICULTURAL POLICIES TO MEXICAN PRODUCERS, GLOBAL DEVELOPMENT AND ENVIRONMENTAL INSTITUTE* (2009), available at <http://www.wilsoncenter.org/publication/mexican-rural-development-research-reports-english-spanish> [hereinafter WISE, *AGRICULTURAL DUMPING*]; BURSTEIN, *supra* note 20, at 2 (2007).

131. BURNSTEIN, *supra* note 20, at 1.

132. See e.g., Robert Clinton, *Tribal Courts and the Federal Union*, 26 WILLAMETTE L. REV. 841 (1990). See Matthew L.M. Fletcher, *Sawnawgezewog: "The Indian Problem" and the Lost Art of Survival*, 28 AM. INDIAN L. REV. 35 (2003-2004) (sovereignty for Indian nations has proven one of extreme complexity and according to one scholar dependent on the timing and nature of when issues surface). See also Robert A. Williams, Jr., *Columbus's Legacy: Law as an Instrument of Racial Discrimination against Indigenous Peoples' Rights of Self Determination*, ARIZONA LEGAL STUDIES, DISCUSSION PAPER NO. 00-36 (2009).

133. *California Food and Agriculture Statistics*, *supra* note 22. Moreover, California

of farm laborers. Within a three-year period, federal benefits have brought California's agricultural economy approximately \$36.6 billion dollars.<sup>134</sup> Farm laborers are necessary to cultivate and harvest the region's perishable crops, including figs, grapes, and other fruits and vegetables, and the many additional commodities that federal subsidies support.<sup>135</sup>

Despite their essential role, the Purépecha in California's the Coachella Valley lacked viable housing alternatives, and a newly implemented housing code threatened their eviction from the county.<sup>136</sup> The county ordinance targeted the substandard and unlicensed housing in Riverside County, where the farmworkers resided. Thereafter, the workers relocated to the Torres Martinez Cahuilla Indian Reservation. Federal law recognizes tribal members can offer their allotments for lease including for example, amphitheater, racing and performances purposes.<sup>137</sup>

Thus, tribal council member Mr. Harvey Duro, Sr., set aside a portion of his allotment for a mobile home park that locals identified as "Duroville."<sup>138</sup> Mr. Duro provided some lessees with mobile homes, while others privately owned their mobile homes.<sup>139</sup> Depending on the planting and harvesting seasons, Duroville became home to three to five thousand Purépecha farmworkers; U.S.-born farmworkers also resided in the park.<sup>140</sup>

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retains the largest population of farmworkers across the nation, employing "almost 450,000 workers, nearly twice the number of the next largest state Washington." *Id.* at 3.

134. In California, agricultural subsidies amounted in a two year period consisted of 1.1 billion dollars. See *Subtotal: Farming Subsidies*, *supra* note 24, at Subsidies Database; Bob Marra, *Coachella Valley Agriculture Staying Strong*, THE PUB. RECORD (Sept. 9, 2008), <http://www.allbusiness.com/economy-economic-indicators/economic-indicators/11651629-1.html>.

135. For more information on California's agricultural labor force, see EMP'T DEV. DEP'T., CALIFORNIA'S AGRICULTURAL EMPLOYMENT (2008), available at <http://www.labormarketinfo.edd.ca.gov/Content.asp?pageid=158>. See also CAL. DEP'T. OF FOOD & AGRIC., CALIFORNIA AGRICULTURAL RESOURCES DIRECTORY (2009), available at <http://www.cdffa.ca.gov/Statistics>.

136. See Riverside County Ordinance X, *supra* note 27.

137. Lease, Sale or Surrender of Allotted or Unallotted Lands, Leases of Restricted Land, 25 U.S.C. § 415 (2006); 25 C.F.R. § 162 (West 2009) (leases and permits). For one example of leasing on Indian land see *Gila River Indian Cmty. v. Waddell*, 91 F.3d 1233 (9th Cir. 1996).

138. Throughout the U.S., newly arriving immigrants commonly witness newly implemented housing ordinances or other measures that criminalize their presence. See Riverside County Ordinance X, *supra* note 27. See also DAVID BACON, *ILLEGAL PEOPLE, HOW GLOBALIZATION CREATES MIGRATION AND CRIMINALIZES IMMIGRANTS* (2008) (connecting the causal but also adverse relationships between labor, globalization and immigration).

139. The exact number of owners as opposed to tenants is unknown.

140. See, e.g., COWAN, *supra* note 20; *The Shock Tour for Teachers; Seeing Where*

Duroville however violated both state building codes for mobile home parks and health and safety legislation.<sup>141</sup> For example, Duroville lacked adequate sanitation facilities, electrical utilities, and water utilities, which exposed its inhabitants to disease and potential injury.<sup>142</sup> Ill-defined dirt roads presented further threats to the health and safety of Duroville residents.<sup>143</sup> For example, residents complained that rain caused “the Park’s dirt roads [to] liquefy” and students would consequently arrive to school “with mud up to their hips.”<sup>144</sup> “Water waste sewage, standing sewage, and dangerous electrical wiring,” were among Duroville’s numerous degraded living conditions.<sup>145</sup> An “unhealthful distribution of drinking water and a deeply flawed septic system” imposed yet additional harmful conditions for Duroville residents who already labored in difficult environmental conditions.<sup>146</sup>

These unsanitary conditions damaged the health of whole families. With “no heat, no air conditioners, undrinkable water, flickering power” the sporadic working plumbing caused young Jose Aguilar to use his mother’s *frijoles* (beans) water for bathing.<sup>147</sup> In the absence of central heating, some trailers used electric heaters, but faulty wiring rendered lighting and heat inconsistent. Leaking sewage “under and around trailers and in common areas” was “tracked into trailers and elsewhere on the feet of residents . . .” and further threatened the habitability of the mobile homes.<sup>148</sup> Additional risks to Duroville residents included “[f]ire threats from

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*Students Live*, L.A. TIMES (Mar. 26, 2007), <http://articles.latimes.com/2007/mar/26/local/me-trailerside26>.

141. See generally Riverside, Cal., Ordinance No. 76 (Oct. 17, 1996) (adopting a mobile park rent stabilization ordinance).

142. The Environmental Protection Agency found the Park violated federal regulations. U.S. EPA Orders Coachella Valley Mobile Home Owners to Comply With Drinking Water, Waste Requirements, U.S. ENVTL. PROTECTION AGENCY (Oct. 5, 2007), <http://yosemite.epa.gov/opa/admpress.nsf/6427a6b7538955c585257359003f0230/0b8df46ab80aa7bd8525736b006822f1!OpenDocument>.

143. See *United States v. Duro*, 625 F.2d 938 (C.D.Cal. 2009); Barry, *supra* note 136.

144. *The Shock Tour for Teachers*, *supra* note 144, at 12. Compare these realities with the standards set by regulations for worker housing. See, e.g., 29 C.F.R. § 1910.143(a) (2011) (obligating drainage).

145. David Kelly, *Duroville Spokesman Disputes BIA Report*, L.A. TIMES (Aug. 3, 2007), <http://articles.latimes.com/2007/aug/03/local/me-duro3>.

146. Barry, *supra* note 136.

147. *The Southland’s Third World Slums*, *supra* note 126.

148. Barry, *supra* note 136. Farmworker housing settlements is not unique with attendant health problems also presenting challenges. See, e.g., Jesse McKinley, *In a California Town, Birth Defects, Deaths and Questions*, N.Y. TIMES, Feb. 7, 2010, A18, available at <http://www.nytimes.com/2010/02/07/us/07kettleman.html?pagewanted=all>.

the tightly packed trailers and jerry-built electrical systems.”<sup>149</sup>

To save on housing costs, farmworkers often crowd together in apartments, houses or other types of units, in communities across the United States.<sup>150</sup> In Duroville tightly packed trailers in a similar vein housed as many as thirty or more individuals, each paying \$275.00 to \$300.00 monthly per trailer.<sup>151</sup> The environmental harm from the crowded and densely packed trailer conditions rapidly grew exponentially worse, due moreover to the approximately eight hundred unclaimed dogs with ticks. The dogs roamed at will, chasing and biting children on their way to school.<sup>152</sup>

External hazardous conditions added to the internal environmental hazards harming the health and safety of Duroville residents. A nearby dumpsite burned discarded tires, old batteries, and “paint cans, car batteries, plastic pipes, treated wood and other waste.”<sup>153</sup> A federal memo caused alarm to many Duroville residents with its assertion that “some areas of the dump contained levels of dioxin twenty times the national average.”<sup>154</sup> Dioxin, a carcinogen, “is one of the deadliest manufactured substances.”<sup>155</sup> The National Institute of Environmental Health Sciences reports that the carcinogen dioxins “are a class of chemical contaminants that are formed during combustion processes such as waste, incineration, forest fires, and backyard trash burning, as well as bleaching and herbicide manufacturing.”<sup>156</sup> When consumers eat food grown in dioxin-exposed soil, dioxin “accumulates in the fatty tissues, where [it] may persist for months or years.”<sup>157</sup> Worse, the carcinogen was airborne: fires at the dumpsite caused Duroville’s residents, including young children, to awaken to “burning smoky air and

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149. A Duroville spokesperson dismissed the allegations as “gross exaggerations” and said they were “stoked by racism on the government’s part.” McKinley, *supra* note 152.

150. DEP’T OF MICH. CIVIL RIGHTS, *supra* note 6.

151. David Kelly, *U.S. Judge Tours Duroville To See Conditions First Hand*, L.A. TIMES (Dec. 21, 2007), <http://articles.latimes.com/2007/dec/21/local/me-duro21/2> (costs of rentals of sites).

152. Lindsay Barnett, *Animal Action League Works to Help Duroville’s Dogs*, L.A. TIMES (Mar. 8, 2009), <http://latimesblogs.latimes.com/unleashed/2009/03/duroville-dogs.html>.

153. *The Southland’s Third World Slums*, *supra* note 126 (environmental harm is a factor for farmworkers employed or residing near fields sprayed with pesticides and other contaminants).

154. *Id.* DIOXINS, NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH, *available at* <http://www.niehs.nih.gov/health/topics/aents/dioxin/index.cfm> [hereinafter NIEH, DIOXINS].

155. *The Southland’s Third World Slums*, *supra* note 126.

156. NIEH, DIOXINS, *supra* note 158.

157. Chemical workers exposed to “high levels of dioxin have an increased risk of cancer . . . with the chemical causally linked to ‘reproductive and developmental problems, and an increased risk of heart disease and diabetes.” *Id.*

burning trash odors.”<sup>158</sup> Prolonged dioxin exposure causes various illnesses, including cancer, a skin disease called “chloracne,” and “reproductive and developmental problems.”<sup>159</sup> In time, a federal order closed the dumpsite, but subsequently fires nonetheless would “spontaneously” erupt, further polluting and scarring the environment without constraint.<sup>160</sup>

Unfortunately, farmworkers outside of Duroville also experience environmental hazards and related health conditions.<sup>161</sup> Presently, cancer clusters among children, coupled with birth defects, are plaguing farmworker communities without relief.<sup>162</sup> For example, the Kettleman, California, region illustrates the dire consequences of exposure to harmful ambient air “qualities” that run from birth defects to the deaths of local children.<sup>163</sup> Additional environmental harm stems from unsanitary water used in farmworker communities.<sup>164</sup>

The temporary nature of migratory employment, along with the isolation of migrant encampments, or other housing frequently allows employers and landowners to escape enforcement from common law or statutory doctrines that would otherwise protect residents in urban housing environments.<sup>165</sup> Fearing retaliation ranging from their discharge or possible eviction diminishes reporting of harmful conditions. Additional aggravating factors

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158. Cesar Rafael, *The Contaminated Valley Film, A Purepechan, Desert Mirage High School Film Project of Duroville and Thermal*, L.A. TIMES, Mar. 26, 2007.

159. NIEH, DIOXINS *supra* note 158, at 1.

160. See e.g., *U.S. v. Torlaw Realty, Inc.*, 483 F. Supp. 2d 967 (2007); *Coachella Valley Waste Operator Ordered to Pay Millions for Torres Martinez Open Dumping*, U.S. ENVTL. PROTECTION AGENCY (Monday, November 28, 2011), <http://www.epa.gov/region9/tribal/features/lawson> (showing photos of dumpsite where “fires regularly affected the resident of the nearby trailer park”); *Duroville Spokesman Disputes BIA Report*, *supra* note 149.

161. To the workers’ detriment, environmental harm is common in farmworkers communities. See e.g., Keith Cunningham-Parmeter, *A Poisoned Field: Pesticide Exposure and Tort Recovery in an Era of Regulatory Failure*, 28 N.Y. U. REV. OF L. & SOC. CHANGE 431 (2004); Eileen Gauna, *Farmworkers as an Environmental Justice Issue: Similarities and Differences*, 25 SPG ENVIRON. L. & POL’Y J. 67 (2002). In the present farmworkers and environmentalists are requesting the EPA suspend and cancel the use of methyl iodide used to prepare strawberry fields before planting the fruit. *Petition To Suspend and Cancel All Registrations for the Soil Fumigant Iodomethane*, 76 Fed. Reg. 58, 16770-71 (2011).

162. See, e.g., Louis Sahagun, *EPA Probes Role in Town with Dump*, L.A. TIMES (Jan., 29, 2010), <http://articles.latimes.com/2010/jan/29/local/la-me-toxic29-2010jan29> (birth defect cluster of farmworkers facing toxic waste dump and pesticides).

163. See, e.g., Jill U. Adams, *Kettleman City Cleft Deformities Raise Questions of A Cluster Case*, L.A. TIMES (Feb. 22, 2010), <http://articles.latimes.com/2010/feb/22/health/la-he-closer22-20100222>; Carol Byrne, *What is Killing These Babies?*, STAR TRIB. (May 2, 1993).

164. Cf. COLORADO LAW ON MIGRANT LABOR CAMPS, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENTS (1968).

165. *Durig v. Wash. County & Townsend Farms*, 34 P.3d 169 (Or. App. 2001).

include agencies' failure to identify migratory workers as tenants<sup>166</sup> and the zoning differences between rural and urban land use for housing purposes.<sup>167</sup> Farmworkers' fear of retaliation, moreover, either in the form of eviction, or removal from the United States if in undocumented status, cause them to hesitate before reporting unsafe housing conditions.<sup>168</sup>

The doctrine of the "implied warranty of habitability," the common-law concept that a landowner has a duty to provide tenants with safe, clean and habitable living conditions, provides a basis on which to enforce tenants' right to safe housing.<sup>169</sup> Tenants moreover can usually measure their conditions against the standards of local building codes.<sup>170</sup> In limited situations, rural residents can obtain relief from deficient housing structures based on common law doctrines, such as waste law, or nuisance law meant to protect tenants and landholders. A number of jurisdictions also impose mobile home park regulations to govern and promote the health and safety of residents.<sup>171</sup>

On Indian reservations, however, a state's health and safety standards yield to federal preemption and follows from the federal jurisdiction of Indian land. State housing standards directly linked to health, safety and welfare legislation are thus inapplicable to Indian reservations. Federal "standards" that, in theory, the government applies to federal land, fall under the jurisdiction of the

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166. See e.g., *DeBruyn Produce Co., v. Romero*, 508 N.W.2d 150 (Mich. Ct. App. 1993) (declaratory judgment action seeking analysis of whether farmworkers would be recognized as tenants). In contrast, farmworkers' contractual relationship with employers precludes employers from dispossessing workers from on-site housing. *Vasquez v. Glassboro Assoc., Inc.*, 415 A.2d 1156 (N.J. 1980).

167. See *Durig*, 34 P.3d 169 (identifying zoning distinctions under state law and regarding rural property use).

168. Cf. 29 U.S.C. § 1823 (2006) (Safety and Health of Housing) (requires "compliance with substantive Federal and State safety and health standards"). Commonly in instances involving mobile homes, states retain a separate set of regulations.

169. See *Javins v. First Nat'l Realty*, 428 F.2d 1070 (D.C. Cir. 1970) (Doctrine of Habitability).

170. Various forms of waste can occur but the doctrine aims to protect a tenant's leasehold interest and a lessors' reversionary interest in the property leased. See, e.g., *Melms v. Pabst Brewing Co.*, 79 N.W. 738 (Wis. 1899). As to nuisance law, see generally *Ozark Poultry Products, Inc. v. Garman*, 472 S.W.2d 714 (Ark. 1971).

171. See e.g., TIM IGLESIAS, *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT*, AMERICAN BAR ASSOCIATION (2006) (noting affordability and increase of mobile park homes); Wis. Stat. Ann. § 710.15 (West 2001); U.S. CENSUS BUREAU, *MANUFACTURED HOMES SURVEY* (May 3, 2012), available at <http://www.census.gov/construction/mhs/mhsindex.html>; *Bryan v. Itasca*, 426 U.S. 373 (1976) (holding that the state could not impose a tax on Indians living in the reservation in the absence of congressional intent to do so).



Bureau of Indian Affairs ("BIA") or other federal agencies responsible for clean air and water. This relationship accordingly obligates the United States to monitor adverse conditions on tribal land.

Indian nations have also adopted landlord-tenant codes, going beyond federal standards. The Torres Martinez Cahuilla, for example, eventually adopted a landlord-tenant code. The code, however, arrived during the litigation to close Duroville. Accordingly, it came too late to avoid the federal scrutiny that, thereafter, intruded on the tribe's right to control land use within its reservation.<sup>172</sup>

This article next examines what led to the adverse housing conditions in Duroville.

## B. BIA Inaction and Violation of Trustee Duties

The Indigenous resided within the geographical borders of North America long before entry of the Europeans and others.<sup>173</sup> Newly arriving colonizers however sought Indian-held land and employed ingenious "interpretations" of law to disenfranchise native groups from their territories.<sup>174</sup> The tangled legal and sociological history of Indigenous nations' attempts to defend their territories has created convoluted and capricious relationships between the federal government, states and tribes.<sup>175</sup>

Specifically, federal courts imposed on Indigenous nations a type of control that the courts since have interpreted as "protection."<sup>176</sup> From its earliest history, the United States has held

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172. The Torres Martinez Desert Cahuilla Indians website available at <http://www.torresmartinez.org>. See also Amicus Curiae Brief of Torres Martinez Desert Cahuilla Indians with Regard to Motion for Preliminary Injunction, *United States v. Duro*, 625 F.2d 938 (C.D. Cal. 2009) (No. 507CV01309), 2008 WL 909800; David Kelly, *Duroville Owner Strikes Back at BIA*, L.A. TIMES (Sept. 7, 2007), <http://articles.latimes.com/2007/sep/07/local/me-duro7>.

173. See, e.g., *United States v. Chaves*, 159 U.S. 452 (1895) (on land "since time immemorial" but lands lost due to new constructions of the "legal" standards of that period). See Donald Juneau, *The Light of Dead Stars*, 11 AM. INDIAN L. REV. 1, 2 (1983) (recognizing "Not only does the Recopilación (Roman law) afford a basis for establishing ownership in property derived from immemorial aboriginal possession, it can be used to reclaim property wrongfully disposed of an Indian tribe that has used and occupied the lands for a long period of time.").

174. See, e.g., *Chaves*, 159 U.S. 452; *United States v. Sandoval*, 167 U.S. 278 (1897) (new treaty "interpretations" rather than protect the commons of an Indian pueblo rejected and opened the door to the U.S. selling the formerly held communal lands of the pueblo).

175. Andrew Sluyter, *Colonialism and Landscape in the Americas: Material/Conceptual Transformations and Continuing Consequences*, 91 ANNALS OF THE ASSOC. OF AM. GEOGRAPHERS 2 (2001).

176. *Worcester v. Georgia*, 31 U.S. 350 (1932). See also *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942); VINE DELORIA JR. & CLIFFORD M. LITTLE, *AMERICAN*

most tribal land “in trust or restricted status” for the “beneficial ownership of Indian tribes or individual Indians”<sup>177</sup> with the BIA facilitating the relationship. The BIA accordingly has a fiduciary duty to Native Americans to protect Indian resources and allotments.<sup>178</sup>

Trust lands, moreover, can be “leased to Indians, or non-Indians for a variety of purposes under applicable law.”<sup>179</sup> The Indian Long-Term Leasing Act of 1955 facilitates lease agreements by Indian nations, but requires approval of such leases from the Secretary of the Interior.<sup>180</sup> The Act specifically authorizes leasing for “religious, educational, recreational, residential or business purposes . . .” Yet it also permits leasing for “. . . development or utilization of natural resources . . . for grazing, farming . . . and . . . making substantial improvements.” Developers have often used Indian and tribal lands for less-than-honorable purposes, to the detriment of the tribe.<sup>181</sup>

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INDIANS, AMERICAN JUSTICE (1983). For an example of the fiduciary trust see American Indian Agricultural Resource Management, Findings, 25 U.S.C.A. § 3701 (West 2011), recognizing that “the United States has a trust responsibility to protect conserve, utilize and manage Indian agricultural lands consistence with its fiduciary obligation and its fiduciary and unique relationship with Indian tribes.”

177. *National American Indian Housing Council White Paper On Legislation to Amend the Indian Long Term Leasing Act of 1955*, NAT’L AM. INDIAN HOUSING COUNCIL (June 29, 2009), <http://www.naihc.net/uploads/hearth-act/1955-ACT-Background-Memo.pdf> (“membership of 267 tribes . . . representing nearly 460 Indian tribes, and provides its members with training, technical assistance, research, communications and advocacy.”). Authorities estimate the specific number of acres held in trust at approximately fifty million acres, with Congress adopting legislation to segregate tribal lands in early U.S. history. See Indian General Allotment Act, 24 Stat. 388 (1887). Land size varies and can range from millions of acres to smaller holdings of one hundred acres and even less. See *Federal Lands and Indian Reservations*, NAT’L ATLAS OF THE U.S. (Thursday, 03-Feb-2011 13:16:28 CST), <http://www.nationalatlas.gov/printable/fedlands.html>. The segregation of Indian land expedited the sale of any “excess,” moreover, to homesteaders and to other third-party interests. This adds to the conflicted history of the federal “trust” obligation.

178. Bureau of Indian Affairs, 25 U.S.C. § 1 (2011). Cf. *Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009) (alleging and ultimately in a subsequent class action agreement, the BIA failing to protect tribal assets).

179. NAT’L AM. INDIAN HOUSING COUNCIL, *supra* note 182. See also, *Confederated Salish & Kootenai Tribes of Flathead Reservation v. United States*, 467 F.2d. 1315 (Ct. Cl. 1972) (lease of license to a power company did not constitute a breach of its fiduciary duty to the tribe); *Oenga v. United States*, 83 Fed. Cl. 594 (2008) (breach of fiduciary duty regarding allotment for “development and production of oil”); *Nulankeyutmonen Nkhihtagmikon v. Impson*, 462 F. Supp. 2d 86 (D. Me. 2006) (lack of standing in the absence of a direct injury has precluded a cause of action for the tribes who challenge BIA leasing); *Bullcreek v. U.S. Dept. of Interior*, 426 F. Supp. 2d 1221 (D. Utah 2006) (“storage of spent nuclear fuel”).

180. *Lease, Sale or Surrender of Allotted or Unallotted Lands, Leases of Restricted Lands, Restricted Land*, 25 U.S.C. § 415 (2006).

181. *Cobell*, 573 F.3d 808.

Before approving a proposed lease, the Secretary of the Interior reviews:

... In reviewing a negotiated lease for approval, we will defer to the landowners' determination that the lease is in their best interest to the maximum extent possible. In granting a lease ... we will obtain a fair annual rental and attempt to ensure ... that the use of the land is consistent with the landowners' wishes. We will also recognize the rights of landowners to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved. . . .<sup>182</sup> ... We will also recognize the governing authority of the tribe . . .<sup>183</sup>

The relationship of the BIA with Indian lands stands out against a landscape of legal conflict with the Indigenous in the United States. Harmful administrative and judicial decisions have exacted from the Indigenous millions of lost acres, misappropriated funds, and permitted other detrimental BIA actions that extend the colonial rule of the past into the present.<sup>184</sup>

In line with this history, Duroville represents yet another example of the conflicts the BIA has forced on Indian lands and communities, without regard to its legislative mandate. Specifically, in *Nance v. EPA*, the federal district court recognized that "any federal government action is subject to the U.S. fiduciary responsibility."<sup>185</sup> Congress should have contemplated any agricultural law accommodation for the needs of Indigenous or all farmworkers within this framework.

Mr. Duro opened his doors to the marketplace, but, without a record, it is unknown whether he had consulted with the BIA prior to designating his allotment as a mobile home park, notwithstanding his assertions that he had in fact sought the assistance of the BIA.<sup>186</sup>

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182. Two primary federal implementations for leasing on Indian land. What Are The BIA's Objectives In Granting or Approving Leases?, 25 C.F.R. § 162.107 (2009); What Are BIA's Responsibilities in Administering and Enforcing leases?, 25 C.F.R. §162.108 (2009). See also *Morongo Band of Mission Indians v. Sacramento Area Director*, 86 Int. Dec. 680 (1979) (Director's disapproving proposed lease).

183. 25 C.F.R. § 162.107(b).

184. See, e.g., Matthew Fletcher, *The Supreme Court and Federal Indian Policy*, 85 NEB. L. REV. 121 (2006).

185. *Nance v. EPA*, 645 F.2d 70 (5th Cir. 1985) (recognizing tribal authority over environmental matters).

186. The court found that provisions in the earlier Stipulation were ambiguous and confusing. Specifically, in the absence of applicable governmental codes to measure any compliance with the Stipulation, it was unclear what Mr. Duro could have done to comply with the lease provisions of the Stipulation. Thus, the Court vacated its finding regarding summary judgment related to the breach of the Stipulation. *United States v. Duro*, 625 F. Supp.2d 938, 941 (C.D. Cal. 2009).

Even if Mr. Duro had not requested assistance, the BIA failed to act in the best interests of the Cahuilla Indian tribe. This omission joins a long historical record of the federal government breaching its fiduciary responsibilities to Indian tribes.<sup>187</sup>

The systemic unsafe and unsanitary consequences of Duroville from early on demonstrate how the BIA breached its trustee duties to the Torres Martinez Cahuilla. The BIA, however, asserted that it was unaware of what the farmworkers were facing on the reservation.<sup>188</sup> Yet primary evidence dating even before the BIA demanded that Duroville cease its operations, exists in part because the Bureau had also targeted the mobile park for “clean water violations, open sewage, illegal dumping and insufficient space between the estimated 350 trailers.”<sup>189</sup> The BIA for example reported that Duroville “had been sending sewage into the Salton Sea” creating environmental harm and attracting the attention of Environmental Protection Agency officials.<sup>190</sup> The location of “propane tanks” underneath the trailers also caused a fire hazard to the “closely packed trailers” and, taken together, the above eventually led the BIA to file a lawsuit against Duroville’s owner.<sup>191</sup> However, the BIA only acted after the situation attracted the attention of the EPA.

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187. See *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (abrogated treaty rights with an emphasis on congressional authority over Indian allotments and with excess land “sold” to non-Indians thereby resulting in the loss of millions of land for agricultural purposes not benefiting Indians). For a historical interpretation of *Lone Wolf* and its aftermath, see, e.g., Anthony G. Gulig & Sidney L. Harring, “An Indian Cannot Get A Morsel of Pork . . . A Retrospective on *Lone Wolf*, *Blackbird*, *Sovereignty*, *Land* and *Writing Indian Legal History*,” 38 TULSA L. REV. 87 (2002-2003) (criticism of employing older cases in the present and its relationship to sovereignty).

188. Earlier court ordered stipulations as to improving Duroville including providing, among other necessities, fire hydrants, water supply and emergency vehicle access, bringing up to code for example, electrical, water, propane, sewage and disposal systems. Notwithstanding the ambiguous complexities in responding to the court ordered stipulation, the federal court held that “as a matter of law, that the creation and operation of the defendant Desert Mobilehome Park, aka Duroville . . . was accomplished and sustained in violation of federal law requiring a lease approved by the Secretary of the Interior.” *Duro*, 625 F. Supp.2d at 941. See also Status Report of Defendant Harvey Duri and Desert Mobile Home Park, Inc. a California Corp., Regarding Compliance with Stage 1 of May 1, 2008 Order, No. 507CV01309., 2008 WL 4193496 (C.D. Cal.) (“disagreements arose . . . regarding furtherance of plans”). Prior to filing its motion to cease operation and long after the festering conditions had escalated, the BIA attempted to work with Mr. Duro.

189. *Duroville Spokesman Disputes BIA Report*, *supra* note 149.

190. David Kelly, *Teams Inspect More Trailer Parks in Desert*, L.A. TIMES (Aug. 14, 2007), <http://articles.latimes.com/2007/aug/14/local/me-parks14>

191. The BIA filed its initial complaint against Mr. Duro in 2007. *United States v. Duro*, California Central Dist. History, [ecf.cacd.uscourts.gov/cgi-bin/5:07-cv-01309-sgl-op](http://ecf.cacd.uscourts.gov/cgi-bin/5:07-cv-01309-sgl-op).

The BIA's long-delayed response, incredulously arguing that Duroville's conditions presented an "imminent threat" to the health and safety of its residents, is incomprehensible.<sup>192</sup> Rather than assist Mr. Duro, the BIA requested through an "equitable motion" a preliminary injunction order to close Duroville's operations. The BIA left the issue of where the farmworkers would relocate unaddressed, but Duroville's closing would have immediately evicted three to five thousand tenants who lacked alternative housing further resulting from their desperately low salary levels.<sup>193</sup> During this period, out of fairness to the BIA, once it noticed the situation, it began attempts to work with Mr. Duro. By then, however the site's harmful conditions had escalated out of control.

The federal government, by permitting the Park's use, allowed Duroville's deficiencies to exacerbate over several years at the same time they were employed in the region's agricultural sector. The water violations, open sewage violations, illegal dumping and insufficient space between its trailers presented tangible harms to the residents and who remained critical to the agricultural sector. In sum, the litany of violations provided the BIA with actual and constructive knowledge of the damaging housing conditions the Duroville residents confronted.

The BIA's failure to assist Mr. Duro caused him to file a lawsuit asserting the BIA's actions against him were "motivated by racial animosity," had defamed him, and that such actions were "unfairly targeting Latinos and Native Americans."<sup>194</sup> The Duroville mobile home park's representatives also charged the BIA with "racism" for failing to provide them with copies of its reports detailing the mobile home park's deficiencies.<sup>195</sup>

The Cahuilla tribe further asserted that the undocumented status of some of the mobile home park's residents provoked the federal scrutiny that led the BIA rather than assist the residents to demand the mobile home park's closing.<sup>196</sup> Finally, others charged

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192. *Duroville Spokesman Disputes BIA Report*, *supra* note 149 (Spokesman, Mr. Singer asserting Mr. Duro had spent thousands trying to clean up Duroville).

193. USDA, National Agricultural Statistics Service, 2007 Census - State Data, Table 7, Hired Farm Labor Workers and Payroll: 2007.

194. *Duroville Owner Strikes Back at BIA*, *supra* note 177.

195. *Duroville Owner Strikes Back at BIA*, *supra* note 177. In facing the government's action in equity, the law also recognizes the unclean hands doctrine that is woefully evident in the instant case.

196. *Id.* To eject the undocumented would not have eradicated the harmful conditions surrounding Duroville but would have offered only a small measure of immediate relief to the mobile park home and neither those residing there nor deported from the U.S.

the BIA lacked the “expertise needed to run such parks” and asserted that Duroville offered a “critical service to those”<sup>197</sup> unable to “afford the high cost of housing in the Coachella Valley.”<sup>198</sup> The BIA’s own reports show the veracity of Duro’s pleas for assistance, often characterizing Duroville as at continued risk, due to “dangerous electrical wiring” with “trailers packed together” making it a “hazard.”<sup>199</sup> Mr. Duro asserted that notwithstanding his own potential liability, despite the continuing, escalating deterioration of the already out-of-control conditions, the BIA had also prohibited him from correcting Duroville’s deficiencies.<sup>200</sup>

This article next examines how the deterioration of the housing conditions ultimately led to a litigation battle.

### C. A Housing Litigation Battle

Duroville’s conditions generated a media firestorm, not only from its deplorable housing conditions but also over the lack of affordable, sanitary housing alternatives. The conflict between the BIA and Mr. Duro, along with the festering conditions at the mobile home park, led the BIA to demand the Park’s immediate closing through an injunctive relief motion. The acrimony between Mr. Duro and the BIA prompted the federal district court to visit the site during the litigation, to determine whether to grant the federal motion to evict everyone.<sup>201</sup> The government, however, neither ameliorated the housing conditions nor offered alternative housing options for the thousands residing in Duroville. In contrast, the government’s motion for injunctive relief demanded an order to close Duroville immediately.<sup>202</sup> Notwithstanding Duroville’s harsh conditions, eviction, coupled without housing alternatives caused residents to assert, “We would have no other place to go.”<sup>203</sup>

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197. *Id.*

198. *Id.* “Mr. Duro’s allotment ... is held in trust for Mr. Duro and the United States has certain obligations with respect to the property.” Supplemental Brief Opposing Appointment of Receiver, *United States v. Duro*, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 07-1309 SGL (Opx)), 2008 WL873340.

199. *Duroville Spokesman Disputes BIA Report*, *supra* 149.

200. The court recognized that “the BIA actually attempted to obstruct Mr. Duro’s efforts to commercially develop his allotment.” *United States v. Duro*, 625 F. Supp. 2d 938, 942 (C.D. Cal. 2009).

201. *United States v. Duro*, California Central Dist. History, [ecf.cacd.uscourts.gov/cgi-bin/5:07-cv-01309-sgl-op](http://ecf.cacd.uscourts.gov/cgi-bin/5:07-cv-01309-sgl-op) (Dec. 19, 2007, minutes of Judge Stephen G. Larson scheduling a site inspection).

202. *Duro*, 625 F. Supp. 2d at 940 (seeking *inter alia* injunctive relief and money damages).

203. See, e.g., David Kelly, “Things Happened So Fast” (Nov. 12, 2007), <http://articles.latimes.com/2007/nov/12/local/me-harvey12>. See also *Duro*, 625 F. Supp. 2d at 944 (the court also refused to eject the tenants because they “have nowhere to go”).

In the interim, while waiting for the federal district court to grant or deny the government's motion to close Duroville, Mr. Duro made initial improvements to Duroville. The rapidly escalating public health issues, however, proved too much for his attempts. During the two years before its ultimate ruling, the federal court furthermore appointed a receiver to monitor Duroville, charged with responsibility for site visits and monitoring of tenants' injuries.<sup>204</sup> At one point, the federal district court ordered that the receiver facilitate "upgrades" to Duroville and prepare a report on whether Duroville should remain open.<sup>205</sup> The court also obligated the receiver to "make emergency repairs and temporarily take over all financial operations." By that point, the Cahuilla agreed with the court order permitting the receiver as "reasonable and sensible."<sup>206</sup>

The court-appointed officials eventually "recommended the park remain under federal control for three to five years."<sup>207</sup> Workers made initial repairs, while the court's final decision whether to close Duroville remained outstanding. In the meantime, aside from ordering improvements to Duroville, the court ordered the continued housing of residents who lacked adequate housing alternatives.<sup>208</sup>

In contrast to the BIA's arguments in *United States v. Duro*, the federal district court ultimately agreed with Mr. Duro by rejecting the request to close Duroville and evict its residents. The district court verified that the federal government had not done anything to assist Mr. Duro, even as the BIA issued federal reports on

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204. The receiver remained up to and following the Duroville trial. THOMAS J. FLYNN, REGARDING DUROVILLE OPERATIONS AND COMPLIANCE WITH COURT ORDER, REMEDIES AFTER BENCH TRIAL (2010). See also David Kelley, *Desert Slum Gets A 'New Sheriff'*, L.A. TIMES (Mar. 9, 2008), <http://articles.latimes.com/2008/mar/09/local/me-duroville9>.

205. *Id.*

206. David Kelly, *Judge Names Overseers for Duroville*, L.A. TIMES (Feb. 12, 2008), <http://articles.latimes.com/2008/feb/12/local/me-duroville12>. See also Supplemental Brief Opposing Appointment of Receiver, *United States v. Duro*, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 07-1309 SGL (Opx)), 2008 WL873340. The court ultimately appointed Receiver Thomas J. Flynn in 2009. See First Report of Receiver Thomas J. Flynn, Regarding Duroville Operations and Compliance with Court Orders In April 30, 2009 "Order Re Remedies After Bench, *United States v. Duro*, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 07-01309-SGL (JCRx)), 2009 WL 2968468.

207. David Kelly, *Report Backs Saving Duroville*, L.A. TIMES, April 19, 2008, at 4.

208. Kelly, *supra* note 212. The range of improvements were numerous and included hiring a construction and code consulting firm to rehabilitate the trailers, removing wooden structures, treating well water, securing "propane outside the mobile home ... and to secure propane tank on a stable surface with appropriate strapping an secure valves," improving sewage ponds, and "eradicating dogs" from the park. First Report of Receiver, *supra* note 211.

Duroville's dire circumstances.<sup>209</sup> The court moreover found that the BIA had obstructed Mr. Duro's attempts to operate Duroville. The court also held that the BIA had breached its fiduciary duty to Mr. Duro by denying his lease.<sup>210</sup> For example, the district court ruled that "throughout this litigation [the BIA] has appeared anxious to apply the regulatory aspects of Title 25, but not its rehabilitatory, assistive, or procedural aspects."<sup>211</sup> Mr. Duro's request for a lease had occurred long after the fact, and not as a precedent to opening the mobile home park. The court nonetheless criticized the BIA's failure to provide Mr. Duro with his appellate rights after "denying the lease."<sup>212</sup> Ultimately the Court's ruling noted a BIA attitude that bordered on an "adverse predisposition if not an outright racial animus towards Mr. Duro."<sup>213</sup>

Ultimately, and contrary to similar circumstances involving harmful housing conditions the district court's rejection of the government's motion for an injunction refused to force Duroville's closure and the immediate eviction of its residents. The district court ruled that evicting Duroville's residents would result in a "major humanitarian crisis" for the thousands of indigent farmworkers lacking alternative housing possibilities.<sup>214</sup> The court stated, "[T]o close the Park under current conditions would create one of the largest forced human migrations in the history of this State."<sup>215</sup> The court ordered the receiver to maintain control of Duroville for an extended period and imposed several conditions to allow Duroville to remain open.<sup>216</sup> The court's order required the receiver to monitor the performance of improvements based on previous court-ordered engineering studies and upgrades to Duroville's infrastructure, the hiring of contractors to construct roads, and the implementation of fire suppression systems in compliance with state and country regulations.

Notwithstanding Mr. Duro's pleas for BIA assistance, there is no

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209. *United States v. Duro*, 625 F. Supp. 2d 938, 942 (C.D. Cal. 2009).

210. The court recognized for example that "[a]lthough defendants did not bring a counterclaim for breach of fiduciary duty, the BIA's conduct from the genesis of the Park is certainly one factor that the Court will consider in determining the equitable relief to be afforded the government." *Id.* at 943.

211. *Id.*

212. *Id.* at 942.

213. *Id.*

214. *Id.* at 944.

215. *Duro*, 625 F. Supp. 2d at 944-46 (stating that the court would not close down Duroville without alternative safe and healthy housing options, and instead appointed a receiver to oversee the Duroville's conditions).

216. *Id.* at 946.



doubt that the court's frustration at federal inaction heavily influenced the court's refusal to shut down Duroville. The opinion states, for example, that:

Duroville . . . is not a business, it is a village; thousands of our fellow human beings call the Park home . . . [It is a] home for a community of people who are poor, undereducated, disenfranchised, and, in many respects, exploited . . . [T]hese very same people, based on the evidence at trial, are an honest, hard-working, proud, colorful, and family-oriented community of people committed to educating their children and raising them to be productive and successful members of our society.<sup>217</sup>

The court's decision to allow Duroville tenants to remain in their homes caused an immediate public reaction of relief.

As Duroville resident Angelina Cisneros, who resided in a "sea green trailer" with her children asked, "Where are we going to go, where are they going to put us? . . . We don't have any money."<sup>218</sup> Area housing advocates began seeking alternative housing for the displaced workers outside of the reservation. There was also the viable possibility of constructing migrant housing on the reservation.<sup>219</sup>

This advocacy benefited the Purépecha, who were able to remain in Duroville under improved habitation standards. Nonetheless, the United States' food production system intruded on the Torres Martinez Cahuilla Indians' ability and right to manage reservation land by the denial of Duro's lease. The failure of agricultural law to mandate employer provision of housing also gravely harmed the farmworkers and their neighbors. It further burdened the Cahuilla to accommodate a judicial order requiring extended oversight by a court receiver. The legal circumstances that created Duroville compounded the BIA's neglect, and created ~~in~~ yet another example of the United States' colonial conquest of the Cahuilla and Purépecha.

This article next examines the systemic colonization of domestic and international Indigenous groups.

#### **D. Colonization of Domestic and International Indigenous Groups**

The complex and intrusive food law constructions perpetuate

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217. *Id.* at 944.

218. Flaccus, *supra* note 12.

219. *Duro*, 625 F. Supp. 2d 938. Eventually, workers constructed migrant housing on the reservation, without the assistance of area employers; the employers had no responsibility or obligation to house farmworkers. A HUD grant provided the funds.

the colonization of both domestic and international Indigenous communities.<sup>220</sup> Within the boundaries of the United States, over 2.4 billion acres of previously Indigenous-held land have now yielded to the force of colonization through acts of direct violence or laws employed as weapons.<sup>221</sup> The government in lease arrangement moreover has sold acres of the Indian land it held in trust, to non-Indian parties, as “excess land,” for less than market value, in the process breaching the government’s fiduciary duty toward the supposed beneficiaries of its trust.<sup>222</sup>

It is difficult to reconcile the unique and varied blend of Anglo-American jurisprudence that resulted from the conquest of domestic Indigenous nations.<sup>223</sup> Violent military actions joined with conflicting Anglo-American case law inflicted a dual hardship on domestic Indigenous nations.<sup>224</sup> Indigenous people have survived an extensive history of abuses, including dispossession from their lands by military and religious officials,<sup>225</sup> the violent curtailment of

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220. Indigenous California sustained three different conquests that spanned the Spanish period, the Mexican era and culminated with the United States invasion and conquest of Mexico. See, e.g., Guadalupe T. Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921 (2000); NATIVE CALIFORNIANS, A THEORETICAL RETROSPECTIVE (Lowell J. Bean & Thomas C. Blackburn eds., 1976).

221. See, e.g., *Wichita Indian Tribe v. United States*, 696 F.2d 1378 (Fed. Cir. 1983); *Northwestern Bands of Shoshone Indians v. United States*, 324 U.S. 335 (1945); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.), 16-17 (1831); LINDSAY G. ROBERTSON, *CONQUEST BY LAW, HOW THE DISCOVERY OF AMERICA DISPOSSESSED INDIGENOUS PEOPLES OF THEIR LANDS* (2005); Robert A. Williams, Jr., *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 ARIZ. L. REV. 237 (1989); Richard O. Clemm, *Land Rights, Claims, Claims, and Western Shosones: The Ideology of Loss and the Bureaucracy of Enforcement*, 32 POL. & LEGAL ANTHROPOLOGY REV. 279 (2009).

222. See, e.g., *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

223. See, e.g., Sluyter, *supra* note 180. Disenfranchisement from ancestral lands also plagues individuals of Spanish and Mexican descent; Phillip B. Gonzales, *Struggle for Survival: The Hispanic Land Grant of New Mexico, 1848-2001*, 77 AGRIC. HIST. 293 (2003).

224. It is difficult if not impossible to reconcile the breach by the federal government of treaties negotiated by Indigenous nations and their subsequent case law, legislation and policies violating the federal constitution, or breach of other formalistic policies. Moreover, the federal government leased much Indigenous land without the Indigenous nation’s approval or by bypassing federal legislation to expedite leasing Indigenous land. See, e.g., F. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 327 n. 441 (1971); Gerald Gunther, *Governmental Power and New York Indian Lands – A Reassessment of a Persistent Problem of Federal-State Relations*, 8 BUFF. L. REV. 1 (1958).

225. See e.g., Indian General Allotment Act, 25 U.S.C.A § 503 (West 2012) (consolidating and disbursing tribal owned property); Indian Reorganization Act, 25 U.S.C.A § 461 (West 2012); LINDSEY G. ROBERTSON, *CONQUEST BY LAW, HOW THE DISCOVERY OF AMERICA DISPOSSESSED INDIGENOUS PEOPLES OF THEIR LANDS* (2005); *United States v. Sandoval*, 167 U.S. 278 (1897). In *Sandoval*, the U.S. Supreme Court ruled

their religious practices<sup>226</sup> and the diminishment of tribal sovereignty.<sup>227</sup> A long history of colonial land struggles underscores the legal status of domestic Indigenous populations under Anglo-American jurisprudence.<sup>228</sup>

Case after case illustrates the United States government's failure to fulfill its trust obligations and its treaty promises. Examples include the Miami Tribe of Oklahoma's challenge against the "unconscionable consideration" that the United States had "paid" to the tribe for its land.<sup>229</sup> Other land-rights battles have included the suit by the Mille Lac Band of Chippewa Indians to recover damages for the wrongful development of their trust land<sup>230</sup> and the Alcea Band of Tillamooks' suit for the mismanagement of timber resources.<sup>231</sup> *United States v. Duro* adds to this litany of cases exposing federal land policies and their nexus with colonization, and in this instance, through the rubric of food law production.

#### *i. Continuing Colonization of the Cahuilla Nation*

Although the federal government has recognized certain surviving tribal nations, this recognition itself reflects the reach of federal law to define what constitutes a population group, imposing its own interpretations of who is "Indian" enough for "federal recognition." In some instances, groups with longstanding kinships and community since time immemorial have "failed" to achieve federal definitions of what constitutes a "bona fide tribe," but

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against the Mexican and Spanish legal and customary rights of a pueblo's access to communal public lands. In the process disabling the pueblo from access to the natural resources of public lands and thus threatened their right to survive.

226. See, e.g., Allison M. Dussias, *Ghost Dance and Holy Ghost: The Echoes of Nineteenth Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases*, 49 STAN. L. REV. 773 (1997); Arenas v. United States, 322 U.S. 419, 427 (1944) ("long ago the Franciscans converted them to christianity"). Some authors assert the governments' actions constituted genocide against Native Americans. See, e.g., Lindsay Glauner, *The Need for Accountability and Reparation 1830-1976: The United States' Government's role in the Promotion, Implementation, and Execution of the Crime of Genocide Against Native Americans*, 51 DEPAUL L. REV. 911 (2002).

227. "Indian sovereignty is 'a backdrop against which the applicable...federal statutes must be read.'" Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 701 (5th Cir. 1994) (quoting McClanahan v. State Tax Comm'n of Ariz., 411 U.S. 164, 172 (1973)). See also VINE DELORIA, JR. CUSTER DIED FOR YOUR SINS, AN INDIAN MANIFESTO (1969).

228. See, e.g., Wichita Indian Tribe v. United States, 696 F.2d 1378, 1379-80 (Fed. Cir. 1983); Northwestern Bands of Shoshone Indians v. United States, 324 U.S. 335, 336 (1945); Rice v. Cayetano, 528 U.S. 495, 512 (2000) ("guardian-ward relationship").

229. Miami Tribe of Okla. v. United States, 175 F. Supp. 926, 952 (Ct. Cl. 1959).

230. United States v. Mille Lac Band of Chippewa Indians, 229 U.S. 498, 499-500 (1913).

231. United States v. Alcea Band of Tillamooks, 329 U.S. 40 (1946).

nonetheless continue pursuing this federal recognition.<sup>232</sup> Indigenous groups continue to seek enforcement of past federal promises.<sup>233</sup> Indigenous nations moreover continue to fight a convoluted, never-ending battle to retain their sovereignty and independence.<sup>234</sup>

Duroville underscores that colonialism did not end with long-ago historical struggles, but rather, reaches into the present. The BIA's failure to act as required under federal law to protect Indigenous people demonstrates how the federal responsibility to "protect" the Cahuilla nation yielded to the labor needs of the agricultural sector. Authorities ignored the farmworkers, who resided in dangerous housing conditions, which allowed the region's growers and producers to benefit from the workers' labor at the expense of the reservation. This process underscores the causal relationship between current federal food production systems and colonization, harming both domestic and international Indigenous people.

Professor Robert Clinton explains, "[c]olonization redistributes substantial property in favor of the colonizing authority."<sup>235</sup> As in Duroville, "[e]ven after colonization ends, its residual effects remain and create new realities that must be recognized and addressed by the legal system."<sup>236</sup> War between nations and ongoing colonization of the Indigenous has long caused their subjugation, the theft of their land base, and the degradation of their political and socio-economic standing.

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232. See, e.g., RICHARD GUEST, TRIBAL SUPREME COURT PROJECT, available at <http://www.narf.org/cases/supctproj.html> (last visited May 1, 2012) (The goals of the Native American Rights Fund and the National Congress of American Indians forming the Tribal Sovereignty Protection Initiative formed in response to "a series of adverse U.S. Supreme Court cases that negatively affected tribal sovereignty."); Robert N. Clinton, *There Is No Federal Supremacy Clause for Indian Tribes*, 24 ARIZ. ST. L.J. 113 (2002); The struggles of the Apache Lipan Band in South Texas has yet to achieve federal "recognition" notwithstanding its presence since before the 1700s. See generally, Lipan Apache Band of Texas. LIPAN APACHE, available at <http://www.lipanapache.org/>. Additionally Homeland Security is engaging in aggressive acts to dispossess several Lipan Apache band members of their land for constructing the U.S.-Mexico fence. *United States v. 0.26 Acres of Land*, 585 F. Supp. 2d 901 (S.D. Tex. 2008).

233. The breach of promises made to Indian groups has resulted in their descendents seeking assistance at the international level. See Lipan Apache Women's Defense. LIPAN APACHE COUNTY DEF., available at <http://www.lipanapachecommunitydefense.blogspot.com>. The women are reaching out to the international human rights community for assistance, not only to recognize their band, but also to protect them against the actions of Homeland Security, which trespasses on native lands.

234. See, e.g., Matthew Fletcher, *The Supreme Court and Federal Indian Policy*, 85 Neb. L. Rev. 121, 132 (2006); Reed Esterwood, *Indian Self-Determination, The Federal Government, and Tribes in the Wake of Cherokee*, 38 N.M. L. REV. 453 (1824).

235. Robert N. Clinton, *The Proclamation of 1763: Colonial Prelude to Two Centuries of Federal-State Conflict over the Management of Indian Affairs*, 45 BU. L. REV. 339 (1989).

236. *Id.*

*ii. Continuing Colonization of the Purépecha Nation*

In the past, both Native Americans and Mexicans in the United States experienced the colonization of their former lands and territories.<sup>237</sup> Unlike in the United States, where the Indigenous had to wait until 1922 for federal recognition as citizens, Mexico legally recognized its Indigenous communities.<sup>238</sup> Mexico moreover provided its agrarian Indigenous communities with small land holdings.<sup>239</sup>

After a colonial power has, in theory, ended, as Professor Clinton states, its "residual effects" not only remain but also further "create new realities."<sup>240</sup> In this instance, the colonial histories of domestic Indigenous as well as Mexican Indigenous groups illustrate yet another concrete "new reality" for them in the present.<sup>241</sup> Among the new realities for both foreign and domestic Indian groups, agricultural laws and policies have induced their displacement from their lands.

Under both the Spanish and Mexican governance of the former Mexican land that now constitutes the southwestern tier of the United States, *Mexicanas* (Mexican women) could own and operate their own farming enterprises.<sup>242</sup> This stood in stark contrast to the rights of women under the British common-law systems. Part of their new reality therefore emerged when women lacking legal standing lost their land to, squatters,<sup>243</sup> the Homestead Act, and

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237. Outside of Native Americans, the only minority group in the nation covered by Treaty protection includes those of Mexican and Spanish descent. See Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, 9 Stat. 922. Article VIII of the Treaty promised to the population electing to remain in the newly annexed territories, the protection of their interests. Within a few years, however almost all land yielded to the force of colonialism. Case law surfaces periodically of descendants seeking to recover lost lands from the U.S.-Mexico period. See, e.g., *Alliance of Descendants of Tex. Land Grants v. United States*, 27 Fed. Cl. 837 (1993). See also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO 04-59, TREATY OF GUADALUPE HIDALGO: FINDINGS AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN NEW MEXICO 2-12 (2004).

238. *Constitución Política de Los Estados Unidos Mexicanos*, Oct. 4, 1824, art. 2. The legal standing of Mexico's Indigenous populations came with the country's 1824 Constitution.

239. *Id.*

240. Clinton, *supra* note 240.

241. The focus on this essay is the colonization of Indigenous groups as seen through food production law and not on how the United States Supreme Court analyzes the plenary power over tribal nations.

242. See Reclamation Act of 1888, ch. 1069, 25 Stat. 527 (facilitating access to water).

243. *Botiller v. Dominguez*, 130 U.S. 238 (1889) (squatters disregarding the treaty rights of Mrs. Dominguez on her California Alta property).

other agricultural laws and policies.<sup>244</sup>

Thereafter, agricultural law, as witnessed through discriminatory policies, induced the forfeiture of Indian- and Mexican-held farming operations. In turn, this caused litigation against the United States Department of Agriculture ("USDA") for civil rights violations.<sup>245</sup> The USDA is responsible for credit applications, subsidies and a host of agricultural laws and programs to promote the success of agriculture. While several minority groups challenged the USDA's arbitrary and capricious responses to their applications for credit, and have since settled, farmers of Mexican descent and their charges of discrimination remain against the USDA.<sup>246</sup> They have charged the USDA with causing the forfeiture of their farming operations and thereafter promoting the sale of their former property to third parties at less than market value.<sup>247</sup> Although the United States has recently shifted its approach to farmer lending, this overarching agricultural economic template of dispossession gave rise to the desperate circumstances facing the Duroville farmworkers.

Following a similar trajectory, small owner-operators in Mexico are unable to compete in the global economy that federal agricultural law and policies facilitate.<sup>248</sup> The dumping of United States surplus crops, particularly corn, has depressed the prices that small owner operators in Mexico can offer consumers.<sup>249</sup> In turn,

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244. *Id.* See also Donald J. Pisani, *Squatter Law in California, 1850-1856*, 25 W. HIST. Q. 277 (1994). The United States moreover challenged the validity of Mexican held land after the war through extensive litigation. See the California Land Acts of 1851, 9 Stat. 631 (1851).

245. Both Native Americans and farmers of Mexican descent along with Black owner operators have filed lawsuits against the USDA for discriminatory credit policies. The Native American litigation, *Keepeagle v. Johanns*, 236 F.R.D. 1 (D.D.C. 2006) has been settled but the *Garcia v. Veneman*, 444 F.3d 625 (D.C. Cir. 2006) involving Chicana/o farmers case was rejected with future attempts forthcoming. For background on the civil rights violations of minority farmers, see U. S. DEP'T OF AGRIC., A REPORT BY THE CIVIL RIGHTS ACTION TEAM (1997).

246. Small farming operations owned by people of Mexican are however still attempting to enter agriculture. Their commodities however fall outside the favored status permitted commodities under the farm bills. Accordingly, they do not enjoy the federal support of subsidies and other programs. In sum, exposing the financial risks they face would otherwise not face if credit were available to them.

247. *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006). Without access to credit as provided farmers cannot prepare for the subsequent planting season and risk forfeiture of their farms. The USDA local offices in charge of loans, for example, would send the applicants off to find nonexistent prerequisites, and engaged in delay tactics to dissuade the applicant from returning. *Id.*

248. This extends to small owner operated enterprises within the United States in the present period.

249. See WISE, AGRICULTURAL DUMPING, *supra* note 133, at 1.

this caused the Purépecha to relocate to the United States to perform labor in agriculture. The former owner-operator thereafter transitioned to a realm of inadequate housing and impoverishment.<sup>250</sup> This agricultural construction of rural poverty accordingly obligates an alternative worldview.

### III. Agricultural Law and Farmworker Justice?

The absence of mandated farmworker housing perpetuates an industry-driven culture that denies the workers critical to this sector sanitary and affordable shelter. Though isolated legal challenges have alleviated harmful housing conditions for some farmworkers, overly restrictive judicial rulings curtail long-term relief for all workers in this sector.<sup>251</sup> Additionally, growers and producers engage in expensive trial strategies and delay tactics to counteract farmworkers' and advocates' demands that these employers improve their dire farmworker housing. The insufficiency of low-income housing alternatives, coupled with agencies' failure to inspect existing housing and to enforce federal and state housing law continues to construct adverse circumstances for workers in agriculture.<sup>252</sup>

An additional source of injury for farmworkers within the realm of the Cahuilla is the fiduciary duty and relationship of the BIA to tribal lands and its inhabitants. The BIA has a significant history of failing to protect Indian nations or to provide good stewardship of Indian lands,<sup>253</sup> and Duroville adds to the litany of complaints.<sup>254</sup> The BIA, a federal agency, inaction kept a captive workforce in difficult housing conditions and thereby allowed growers and producers the workforce they required.<sup>255</sup> Its actions compounded a

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250. Agricultural farmworker wages average \$10,000 - \$12,499, less than living wage levels for their communities. See U.S. DEP'T OF AGRIC., 2007 CENSUS OF AGRICULTURE (2007). Farmworkers face parasitic and respiratory illnesses, lead poisoning, malnutrition and dental disease. Along with the harm from exposure to pesticides, is their plight without aid from the regulatory state. The struggle to reverse California's decision to permit methyl iodide use in strawberry beds prior to planting the fruit is but one example.

251. *Renteria v. Ag-Mart Produce*, 537 F.3d 1232 (10th Cir. 2008).

252. See, e.g., DEP'T OF MICH. CIVIL RIGHTS, *supra* note 6.

253. See, e.g., *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001) (failure of accounting of trust funds); Robert McCarthy, *The Bureau of Indian Affairs and the Federal Trust Obligation to American Indians*, 19 BYU J. OF PUB. LAW 1 (2004).

254. Tracey Labin, *We Stand United Before the Court: The Tribal Supreme Court Project*, 37 NEW ENG. L. REV. 695 (2003).

255. "Tribal use and development of tribal trust property is one of the main vehicles for the economic self-development necessary to equal Indian participation in American life." *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 664 (1977); *Bryan v. Itasca*, 426 U.S. 373, 388 n14 (1976).

land use dilemma and expedited intrusion on Indian land long after the fact. This intrusion harmed and diminished the Cahuillas' tribal governance rights over their land base.<sup>256</sup>

Tribal sovereignty is a long-sought legal goal for tribes across the United States.<sup>257</sup> At times, federal law has recognized tribal independence, but in multiple situations, the United States has also vacillated on whether to recognize tribal sovereignty.<sup>258</sup> The United States sacrifices tribal sovereignty to third parties who seek access and control to Indian land and natural resources.<sup>259</sup> Rather than assist the Cahuilla and Mr. Duro in a misguided but well-intended housing venture, the BIA's inaction shows, yet again, the federal government's failure to protect tribal lands.<sup>260</sup>

At the crossroads of this relationship between the federal government and Indigenous people stands agricultural law. While agricultural laws benefit the sector's economy, they further cause the loss of Indigenous property in foreign countries. Duroville highlights how federal law drives the agricultural regulatory state while also, expediting employers' access to and control over their employees.<sup>261</sup> In contrast, workers do not receive sustainable wages to offset the dangers of agricultural employment.

At times, federal law has provided offsets for agricultural laborers seeking to leave the sector notwithstanding the critical need for manual workers. For example, the Department of Labor has promoted a path to alternative employment training for farmworkers.<sup>261</sup> Such well-intentioned efforts fail to alleviate the continuing harmful housing conditions for those who remain employed in this sector. Farmworkers continue to experience "sub-

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256. The federal district court's ruling, aside from protecting several thousands of farm laborers from eviction, in essence removed jurisdiction from the BIA and into the hands of the receivers for the purposes of monitoring the habitability conditions of Duroville.

257. See, e.g., Robert Ericson, D. Rebecca Snow, *The Indian Battle For Self Determination*, 58 CALIF. L. REV. 445 (1970).

258. See, e.g., Clinton, *supra* note 240.

259. See, e.g., *Navajo Tribe of Indians v. United States*, 364 F.2d 320 (Ct. Cl. 1966); *S. Fork Band Council of W. Shoshone of Nev. v. Dep't of Interior*, 588 F.3d 718, 724 (9th Cir. 2009); Amy C. Braun, *Karuk Tribe of California v. United States: The Courts Need A History Lesson*, 37 NEW ENG. L. REV. 743, 744 (2003).

260. For discussion as to whether or not the fiduciary relationship exists and the finer distinctions relative to land issues see, e.g., *Caachieri v. Salazar*, 129 S. Ct. 1058 (2009); Tracey Labin, *We Stand United Before the Court: The Tribal Supreme Court Project*, 37 NEW ENG. L. REV. 695 (2003).

261. Press Release, US Labor Secretary Solis Announces More Than \$78 million for National Farmworker Jobs Program (July 24, 2010), available at <http://www.dol.gov/opa/media/press/eta/eta20100878.htm> (application process is coordinated by the states).



human conditions" compounded by "minimum wage or [by] piece work rates" that can be even lower than minimum wage, leaving farmworkers unable to afford safe housing.<sup>262</sup> These "new realities" cause continuing harm to domestic and international Indigenous groups.<sup>263</sup>

The Duroville litigation nonetheless illustrates the conflict between two competing sets of federal laws. The first set is the BIA obligations, as recognized in case law interpreting the fiduciary obligations of the United States. In *Duro*, those obligations collided with the federal farm bills' effects.<sup>264</sup> These irreconcilable laws thereby necessitate new legal constructions and, at the onset, agricultural subsidies remain suspect.

Farm subsidies are the heart and soul of a farm bill. Farm bills include the full range of farm income and commodity price support programs that federal law provides growers and producers of certain critical commodities.<sup>265</sup> Yet the full complement of federal income support programs assisting growers and producers disregards the working conditions of human beings residing in dire circumstances.<sup>266</sup> In sum, a broad wide range of federal assistance shows how federal agricultural laws and policies ensure the economic success of the agricultural sector, while choosing to ignore the creation of harmful circumstances for farmworkers.

A new direction is needed to curtail the harmful practices of the present. Specifically, farm subsidies lack qualitative and substantive controls over the disbursal of billions of dollars in federal funds annually.<sup>267</sup> A federal report highlights the lack of managerial infrastructure controls over eligibility standards, which allows

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262. See Correspondence from Arturo S. Rodriguez, President of the UFW (March 2010) ("... sometimes they aren't paid what they are owed. They are cheated of their overtime ...").

263. Williams, Jr., *supra* note 135.

264. For discussion of to whether or not the fiduciary relationship exists and the finer distinctions relative to land issues see, e.g., *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009); Tracey Labin, *We Stand United Before the Court: The Tribal Supreme Court Project*, 37 NEW ENG. L. REV. 695 (2003).

265. The federal government extends subsidies to producers of certain critical crops, with fruits and vegetables largely outside the realm of subsidies. See, e.g., Food Conservation, and Energy Act, *supra* note 1, at §1603. The owner operators however have other federal assistance such as disaster loans or emergency loans.

266. *Id.*

267. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO 09-07, FEDERAL FARM PROGRAMS, UNITED STATES NEEDS TO STRENGTHEN CONTROLS TO PREVENT PAYMENTS TO INDIVIDUALS WHO EXCEED INCOME ELIGIBILITY LIMITS 10 (2008) (identifying 2,702 potentially ineligible individuals who reported an average AGI loss of \$2.5 million over three years.)

ineligible participants access to funds.<sup>268</sup> Joining the subsidy debate over whether subsidies benefit or harm the agricultural economy and individual owner-operators, additional criticism must stem from the flaws in the measurement standards of subsidy disbursements.<sup>269</sup>

The government grants farmers about sixteen billion dollars annually in farm program payments. These payments go to approximately two million people.<sup>270</sup> The USDA as the figures demonstrate has been unable to address the income eligibility of some recipients.<sup>271</sup> Potentially, the government may be spending improper funds on recipients who exceed income eligibility requirements, such as, for example, "an individual with ownership interest in a professional sports franchise," who accrued \$200,000 in federal benefits. An individual residing outside of the United States received an additional \$80,000. In yet another instance, authorities distributed \$300,000 in public funds to a former insurance executive who may have violated federal eligibility requirements.<sup>272</sup>

Yet other difficulties emerge when the USDA is unable to verify that the recipients are "actively engaged in farming," as is required by the applicable regulations.<sup>273</sup> Without effective controls, the government cannot ensure that it distributes these funds as intended.<sup>274</sup> The lack of detailed oversight into how these funds are spent cultivates a climate of systematic ignorance of the facts on the ground, which harms agricultural laborers.

In the short term, federal law creates a culture of neglect that promotes serious injury to domestic and international farmworkers and thereby obligates transformation to the human condition at the bottom of the agricultural ladder. Federal farm-related funding policies that produce or induce harmful consequences for individuals must yield to a higher level of scrutiny in their application.

Accordingly, to ensure that harm like that of Duroville ceases, all producers receiving federal subsidies must commit to several conditions before the government permits the release of any federal

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268. *Id.*

269. See TIMOTHY A. WISE, GLOBAL DEVELOPMENT AND ENVIRONMENT INSTITUTE, THE PARADOX OF AGRICULTURAL SUBSIDIES MEASUREMENT ISSUES, AGRICULTURAL DUMPING, AND POLICY REFORM, WORKING PAPER No. 04-02 (2004).

270. U.S. Gov't Accountability Office, *supra* note 273 (described in the highlights in the beginning of the report).

271. *Id.* at 12-13.

272. WISE, *supra* note 275.

273. *Id.*

274. U.S. Gov't Accountability Office, *supra* note 273 (providing recommendations for improving program integrity).

farm-related benefits. Specifically, any income-eligible individuals who maintain farmworker housing and receive subsidies should become ineligible if authorities discover housing violations. The conditions attached to the receipt of any federal assistance should also require that agricultural employers provide workers safe and habitable housing. Additionally no federal funds would be released without absent mandatory regulations. Subsequent further conditions such as increasing the regulatory inspection process could provide incentives to prohibit the desperate housing situations that led to Duroville. The ultimate goal would be to eradicate the need for shantytowns and slums. Farmworkers should never have to use caves as dwellings, sleep in cars, or reside in cardboard shelters.

Finally, all agricultural agreements between countries must ensure that they cause no harm to domestic or international native lands. Any potential agricultural agreement must not only address but also properly ameliorate the deplorable conditions in which farmworkers reside.

## Conclusion

Federal food law expedites food production across the nation, with an attendant impact on Indigenous populations. Duroville traverses a host of conflicts for the farmworkers and for the Cahuilla.

Reaching into the past, this article links the colonialism that subjugated Indian nations and constructed "a new reality."<sup>275</sup> In the present, the nation's food laws illustrate the continued colonization of the Indigenous populations who have historically witnessed irreparable land losses and, in many instances, present induced impoverishment. In contrast, a vast realm of interconnected agricultural laws systematically promotes the continued economic viability of non-minority farm producers.

Farmworkers feed the nation. They do not merit the federal exemptions that excuse the agricultural industry from the prevailing health, safety and labor codes. They further deserve the protections they need to organize for beneficial change.<sup>276</sup> Transformation of

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275. Clinton, *supra* note 240.

276. By comparison, growers and producers enjoy an exemption from antitrust legislation that permits their collective action to secure the best prices available for their commodities. This permits producers to escape federal restraints against restraining trade practices in order to increase their bargaining power through collective action. See Agricultural Fair Practices Act of 1967, 7 U.S.C. §§ 2301-2305 (2011); Swayne Co., Inc., v. Sunkist Growers Inc., 389 U.S. 384 (1968); Clayton Act, 15 U.S.C.A. § 17 (West 1985) (shielding farmers from legislation applicable to other industries); N. Cal. Supermarkets Inc., v. Cent. Cal. Lettuce Producers Coop., 413 F. Supp. 984, 991 (1976) (price fixing

their housing conditions nonetheless is not on the immediate horizon. As one author asserted the:

Debate over FLCRA and, to a lesser extent, MSPA, seems to have been exhausting. It could well be that some may now be disinclined to revisit the statute and to raise new questions. However, the need for oversight would seem to remain a priority where agricultural policy is concerned. Thus far, in the 110th Congress, no new legislation to amend MSPA has been considered.<sup>277</sup>

The Duroville conflict highlights the sometimes-adversarial relationship between federal food production law and Indigenous population groups.<sup>278</sup> Without the attention of advocates and the media nothing in the Park would have changed for either Indigenous group.

Ultimately, the federal government awarded the Torres Martinez Cahuilla Indians funds to construct farmworker housing; and yet the overall *status quo* of desperation for shelter in the Coachella Valley nonetheless remains in full force.<sup>279</sup>

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permitted); JANICE E. RUBIN, CONG. RES. SERV., RL31026, GENERAL OVERVIEW OF UNITED STATES ANTITRUST LAW (2001).

277. WILLIAM G. WHITTAKER, CONG. RES. SERV., RL33372, MIGRANT AND SEASONAL AGRICULTURAL WORKERS: PROTECTIVE STATUTES (2007).

278. See, e.g., U.S. DEP'T OF AGRIC., *supra* note 47.

279. HOMES & CMTYS., CASE STUDY: FARMWORKER HOUSING (2010), available at <http://www.hud.gov>. The announcement justifies the award with assertions of the "shortage of decent, affordable farmworker housing" in the Coachella Valley and the labor need of agriculture.

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